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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ORIGINAL

ALLFIRST BANK *

Plaintiff, *

v. * CASE NO.: 1:01-CV-786

J. Rambo

JOHN M. ORTENZIO *

Defendant. *

FILED
APR 0 3 2002
PER ______ DEPUTY C
HARRISBURG, PA

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MOTION TO STRIKE JURY DEMAND

Plaintiff, Allfirst Bank, by its undersigned counsel, moves for an order striking the jury demand of Defendant, John M. Ortenzio. The grounds for this motions, which are more fully set forth in the accompanying memorandum, are as follows:

1. In this case, the claims made and the relief requested by Plaintiff are essentially equitable in nature. Plaintiff seeks to rescind and nullify a payment made by CCI Construction Company from a $4 million line of credit to satisfy a $1.2 million loan guarantied by Defendant and to enforce that guaranty against Defendant.

2. There is no right to have an action which raises equitable claims and which seeks equitable relief tried to a jury.

In Support of this Motion, Plaintiff submits the following Exhibits:

Documents

Exhibit A	-	Commitment Letter dated March 23, 1999.
Exhibit B	-	Film Promissory Note dated March 24, 1999.
Exhibit C	-	Schwartz Memorandum dated November 4, 1999.

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Exhibit D	-	Commitment Letter dated November 5, 1999.
Exhibit E	-	Suretyship
Exhibit F	-	CCI Financial Statement 1998.
Exhibit G	-	CCI Internal Financial Statement1999
Exhibit H	-	CCI Cash Flow Projection
Exhibit I	-	Default Letter
		Deposition Excerpts
Exhibit J	-	Sherri Phillips
Exhibit K	-	John Ortenzio
Exhibit L	-	Craig Schwartz
Exhibit M	-	Gerard Elias

Lawrence J. Gebhardt, *Pro Hac Vice*
Ramsay M. Whitworth, PA Bar # 85208
GEBHARDT & SMITH LLP
The World Trade Center, 9th Floor
401 E. Pratt Street
Baltimore, MD 21202
(410) 752-5100
Attorneys for Allfirst Bank

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of April, 2002 a copy of *Motion to Strike Jury Demand and Memorandum in Support* was sent by Federal Express to: Edward I. Swichar, Esquire and Robert A. Burke, Esquire, BLANK ROME COMISKY & MCCAULEY LLP, One Logan Square, Philadelphia, PA 19103, *Attorneys for Defendant*.

Lawrence J. Gebhardt

A

DEFENDANT'S EXHIBIT

FIRST NATIONAL BANK OF MARYLAND

A Division of FMB Bank

Regional Corporate Group, Mail Code 133-02-01
3045 Market Street, Camp Hill, PA 17011-4530
Telephone: 717 612-5026 Facsimile: 717 612-5027

March 23, 1999

Ms. Sheri Phillips
Chief Financial Officer
CCI Construction Co., Inc.
P.O. Box 1129
Mechanicsburg, PA 17055

Dear Ms. Phillips:

I am pleased to advise you that The First National Bank of Maryland, a Division of FMB Bank (hereafter "Bank") has increased and reaffirmed an unsecured line of credit (hereafter "Loan") to CCI Construction Co., Inc. (hereafter "Borrower") as follows:

Principal Amount of Loan:	$4,000,000.00
Interest Rate:	Bank's Base Rate as in effect from time to time, minus ½%
Repayment Schedule:	Interest monthly, principal on demand
Use of Proceeds:	Finance work in process and accounts receivable
Collateral:	Unsecured

Borrowings under the Loan will bear interest at an annual rate equal to the Bank's Base Rate as in effect from time to time, minus one-half percent (-1/2%). This interest rate will change when and as the Bank's Base Rate changes. Interest shall be calculated on the basis of the actual number of days in the current calendar year divided by 360. Interest will be payable monthly upon submission of the Bank's statement therefor.

Borrowings under the Loan will be payable on demand. If no demand is made, the Loan will expire and all borrowings will be due and payable, together with interest thereon, on April 30, 2000.

Terms and Conditions:

1. Annual CPA – audited financial statements of CCI Construction Co., Inc.

2. Quarterly work in process reports for CCI Construction Co., Inc.

3. Quarterly Company prepared financial statements of CCI Construction Co., Inc.

4. Monthly borrowers certification with monthly accounts receivable aging and listing.

5. Primary business deposits of CCI Construction Co., Inc. to be maintained at The First National Bank of Maryland, a Division of FMB Bank.

6. Negative pledge of assets other than purchase money.

7. The Company shall maintain a minimum tangible net worth of $4,500,000.00 measured at year end.

8. Advances not to exceed 80% of qualified accounts receivable less than 90 days past dues, excluding retainages.

Availability of the Loan is contingent upon the Borrower and the Bank entering into mutually acceptable loan documentation setting forth terms and conditions stated herein and such other terms and conditions, covenants, warranties and representations as may be required by the Bank and be mutually acceptable to the Borrower and the Bank. All terms and conditions contained herein shall survive the execution of such loan documentation.

This commitment is contingent upon the right of the Bank at any time hereafter and from time to time to review the commitment, to adjust terms and conditions, or to discontinue the commitment should the Bank in a reasonable exercise of its sole business discretion deem it necessary to do so.

Ms. Sheri Phillips
CCI Construction Co., Inc.
March 23, 1999
Page Three

Please acknowledge your concurrence with these terms and conditions by signing, dating and returning the enclosed copy of this letter to the Bank on or before March 31, 1999.

Very truly yours,

Craig J. Schwartz
Vice President

CJS/jkp

Enclosure

ACKNOWLEDGED AND ACCEPTED THIS 24th DAY OF March, 1999.

ATTEST:

BY: ____________________
Title: ASSISTANT SECRETARY

CCI CONSTRUCTION CO., INC.

BY: ____________________ CFO
Title: CFO

EXHIBIT
Ortenzio-3
2/13/01 TRB

B

* a division of
FMB Bank

FILM/CASH SOLUTIONS PROMISSORY NOTE
(PENNSYLVANIA)

Instructions to Loan Officer: Use for (a) loans to corporations, regardless of amount, and (b) loans to non-corporate borrowers when the only purpose of any such loan is business and the principal amount of such loan exceeds $50,000.

$ 4,000,000.00 Mechanicsburg, PA (City) (State) March 24, 1999

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay on demand to the order of THE FIRST NATIONAL BANK OF MARYLAND*[redacted] ("Bank"), at any of Bank's offices, or at such other place as the holder of this Promissory Note may from time to time designate, the principal sum of FOUR MILLION and 00/100 Dollars ($ 4,000,000.00), or such other amount as may be advanced from time to time to Borrower, together with interest thereon at the rate or rates hereafter specified and any and all other sums which may be owing to Bank by Borrower pursuant to this Promissory Note. The following terms, as well as the applicable terms on Exhibit A, attached hereto and incorporated herein by reference, shall apply to this Promissory Note.

1. DEFINITIONS. The following terms have the following definitions:
   - A. "Account" means the commercial checking account maintained by Borrower with Bank and designated as Account No. 28864514, together with any replacement account therefor.
   - B. "Business Day" means any day other than Saturday, Sunday or other day on which commercial banks in the Commonwealth of Pennsylvania are authorized to close.
   - C. "Incremental Advance Amount" means the amount indicated on Exhibit A as the Incremental Advance Amount. Each Loan must be an integral multiple of such amount.
   - D. "Initial Excess Balance" means, for any Business Day, the amount by which the collected balance in the Account at the end of such Business Day after posting all credits to the Account (subject to funds availability), but prior to posting any debits to the Account, exceeds the Target Balance.
   - E. "Line Availability" means, for any Business Day, an amount equal to the difference obtained by subtracting the aggregate principal balance outstanding under all Loans from the Maximum Line Amount.
   - F. "Loan" means an advance of monies from Bank to Borrower pursuant to the terms of this Promissory Note; and the term "Loans" means more than one Loan.
   - G. "Maximum Advance Amount" means an amount equal to the highest integral multiple of the Incremental Advance Amount which does not exceed the Line Availability.
   - H. "Maximum Line Amount" means the amount indicated on Exhibit A as the Maximum Line Amount, which amount is the maximum aggregate principal balance of the Loans which may be outstanding at any one time.
   - I. "Minimum Loan Advance" means the amount indicated on Exhibit A as the Minimum Loan Advance, which amount is the minimum principal amount of each Loan.
   - J. "Presented Items" means, for any Business Day, the aggregate amount of debits which have been presented for payment against the Account.
   - K. "Prime Rate" means a fluctuating annual rate of interest equal to the greater of: (i) that rate announced from time to time by Bank as its "prime rate;" or (ii) the rate obtained by adding one percent (1%) to the average rate, rounded to the nearest one-tenth of one percent, for three month maturity dealer placed commercial paper for the week most recently reported in the Federal Reserve Statistical Release No. H.15(519) entitled "Selected Interest Rates" or any succeeding publication.
   - L. "Target Balance" means the amount indicated on Exhibit A as the Target Balance, which amount is the minimum collected balance that must be maintained in the Account.

2. PROCEDURES FOR LOANS. All Loans shall be made in the form of a transfer of funds into the Account in accordance with the procedures set forth in this paragraph. Borrower hereby irrevocably authorizes Bank to make Loans in accordance with the procedures set forth herein. At the end of each Business Day, Bank shall calculate the Initial Excess Balance and the aggregate amount of the Presented Items. In the event the Initial Excess Balance is less than the aggregate amount of the Presented Items, Bank shall make a Loan by transferring funds into the Account in an amount equal to the amount, which when added to the Initial Excess Balance, would be equal to the aggregate amount of the Presented Items; provided, however, that: (a) the principal amount of the Loan shall not be less than the Minimum Loan Advance; (b) the principal amount of the Loan must be an integral multiple of the Incremental Advance Amount, and therefore, if it would not otherwise be an integral multiple of the Incremental Advance Amount, the amount of the Loan will be rounded up to the next higher integral multiple of the Incremental Advance Amount unless there is insufficient Line Availability in which case the Loan amount will be the Maximum Advance Amount; and (c) the principal amount of the Loan shall not exceed the Maximum Advance Amount. If at any time the amount of the Initial Excess Balance is less than the amount of the Presented Items by an amount greater than the Maximum Advance Amount, Bank shall: (i) make a Loan by transferring funds into the Account in an amount equal to the Maximum Advance Amount; and (ii) determine, in its sole discretion, which Presented Items will be paid, and which Presented Items will not be paid. In the event the Initial Excess Balance is greater than the amount of the Presented Items, Bank shall post and pay all of the Presented Items. If, following Bank's posting and paying of all of the Presented Items, there remains a balance in the Account in excess of the Target Balance, Bank is hereby irrevocably authorized to debit the Account in an amount up to the portion of the balance in the Account which exceeds the Target Balance, and apply such sums to the outstanding balance of the Loans. Bank agrees to make such debit of the Account to repay sums outstanding under the Loans as of the end of each Business Day; provided, however, that in the event the option labeled "Cash Solutions Protection" is marked on Exhibit A attached hereto, Bank shall not automatically debit the Account to make payments on the Loans, but may do so, in its sole and absolute discretion.

3. TERMINATION. The procedure for making Loans, and the obligation of Bank to provide Loans, as set forth in this Promissory Note, may be terminated by Borrower upon ten (10) days prior written notice to Bank and may be terminated by Bank upon thirty (30) days prior written notice to Borrower. Upon termination, no further Loans shall be made under this Promissory Note, but all other terms of this Promissory Note (including, but not limited to, the holder's right to demand payment at any time and for any reason) shall remain in full force and effect.

4. INTEREST. From the date hereof until all sums due hereunder, including principal, interest, charges, fees and expenses are paid in full, the principal amount outstanding from time to time pursuant to this Promissory Note shall bear interest as follows (Check One):

[ ] Fluctuating Rate. At a fluctuating rate equal to ____________% per annum above the Prime Rate in effect from time to time. Bank at its discretion may charge a lesser rate from time to time. Interest on the principal amount outstanding shall be adjusted daily, with the rate for each day being adjusted to reflect the Prime Rate in effect at the close of business on that day. Bank makes loans at interest rates at, above and below the Prime Rate.

[X] Other. (describe): Interest shall accrue at a rate per annum equal to the Bank's Base Rate minus 1/2% as in effect from time to time.

5. CALCULATION OF INTEREST. Interest shall be calculated on the basis of a three hundred sixty (360) days per year factor applied to the actual days on which there exists an unpaid balance hereunder.

6. REPAYMENT. Borrower shall make payments of principal and interest in accordance with the following terms:
(a) Principal: ALL SUMS OUTSTANDING UNDER THIS PROMISSORY NOTE, INCLUDING THE PRINCIPAL AMOUNT OF ALL OF THE LOANS, ARE IMMEDIATELY DUE IN FULL UPON THE FIRST TO OCCUR OF: (I) THE DEMAND OF THE HOLDER OF THIS PROMISSORY NOTE, WHICH DEMAND MAY BE MADE AT ANY TIME AND FOR ANY REASON, IN THE SOLE AND ABSOLUTE DISCRETION OF THE HOLDER OF THIS PROMISSORY NOTE, with 30 days written notice slp; OR (II) THE OCCURRENCE OF ANY DEFAULT UNDER THE TERMS OF THIS PROMISSORY NOTE.
(b) Interest: Borrower shall make payments of all accrued and unpaid interest on the 31st day of each successive month, beginning on March 31, 1999 and continuing until all sums outstanding hereunder are paid in full.
Borrower may prepay this Promissory Note in whole or in part at any time or from time to time without premium or additional interest.

7. LATE PAYMENT CHARGE. If any payment due hereunder (including any payment in whole or in part of principal) is not received by the holder within fifteen (15) calendar days after its due date, Borrower shall pay a late payment charge equal to five percent (5%) of the amount then due.

8. APPLICATION OF PAYMENTS. All payments made pursuant to this Promissory Note shall be applied first to accrued and unpaid interest, then to unpaid expenses and charges payable hereunder, and then to principal, or in such other order or proportion as the holder, in the holder's sole discretion, may elect from time to time.

See below => unsecured

9. SECURITY. Sums due under this Promissory Note are secured by, and Borrower grants to Bank a security interest in, all deposits and property of Borrower now or at any time hereafter in the possession of or on deposit with Bank whether as custodian or depository or in any other capacity. Bank shall have the right to set-off and apply against the obligations of Borrower to Bank evidenced by this Promissory Note any sums of Borrower at any time on deposit with Bank whether such deposits are special, time or demand, provisional or final. In addition, this Promissory Note is secured by any property described as collateral in any security agreement, pledge agreement or other document previously, simultaneously, or hereafter entered into by Borrower in connection with any obligation or liability of Borrower to Bank or any corporate affiliate of Bank, such other security document(s) include but are not limited to the following: slp

[ ] Security Agreement(s)

[ ] Real estate mortgage or deed of trust on property known as ______________________ located in ______________________ County/City, State of ______________________.

[X] Other (describe): Unsecured

This Promissory Note specifically incorporates by reference, as if fully set forth herein, all of the language and provisions of the security documents described generally or specifically above.

10. REPRESENTATIONS AND WARRANTIES. Borrower (and if more than one Borrower, each Borrower) represents and warrants to Bank that the following statements are true, correct and complete as of the date hereof, and as of the date each Loan is made hereunder: (a) it is duly organized and in good standing under the laws of the state in which it is organized; (b) it has the full power and authority to execute, deliver and perform this Promissory Note; (c) neither such execution, delivery and performance, nor compliance by it with the provisions of this Promissory Note will conflict with or result in a breach or violation of its organizational documents, or any judgment, order, regulation, ruling or law to which it is subject or any contract or agreement to which it is a party or to which any of its assets and properties are subject; (d) this Promissory Note constitutes its legal, valid and binding obligation enforceable in accordance with its terms; (e) there is no litigation or proceeding pending or, to the knowledge of its representative signing this Promissory Note on its behalf, threatened against or affecting it which might materially adversely affect its business, financial condition or operations or its ability to perform and comply with this Promissory Note; (f) all financial statements and information furnished or to be furnished to Bank hereunder have been and will be prepared in accordance with generally accepted accounting principles and fairly present its financial condition as of the dates thereof and the results of its operations for the period covered thereby; (g) it is not in violation of any applicable federal, state or local law, statute, rule, regulation or ordinance and has not received any notice nor is the subject of any investigation to the effect that its operations are not in material compliance with any such law, statute, rule, regulation or ordinance, including, without limitation, applicable environmental, health and safety laws and regulations; (h) since September 2, 1974, no pension, employee benefit, multi-employer, profit sharing, savings, stock bonus or other deferred compensation plan ("Plan") maintained by it or any trade or business group with which it is affiliated subject to the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA") has been terminated, no lien exists against Borrower in favor of the Pension Benefit Guaranty Corporation ("PBGC"), and no "reportable event" (as such term is defined in ERISA) has occurred with respect to any such Plan, and Borrower has not incurred any "accumulated funding deficiency" within the meaning of ERISA or any liability to the PBGC in connection with any Plan; and (i) no information, exhibit, report, statement, certificate or document furnished by Borrower or any other person to Bank in connection with the Loans, this Promissory Note or the negotiation thereof contains any material

misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained herein or therein not misleading.

11. DEFAULT. Any of the following will be a default under this Promissory Note: (a) failure to pay any principal, expense, fee, charge or interest when due, or failure to perform any other obligations hereunder; (b) a default by any Borrower upon any of the existing or future obligations of any Borrower to Bank; (c) a default by any guarantor or other person other than Borrower that is now or hereafter liable upon or in connection with any of the obligations of any Borrower to Bank or that has granted any lien or security interest to or for the benefit of Bank to secure any of the obligations of any Borrower to Bank ("Other Obligor"), upon any of the existing or future obligations of any Other Obligor to Bank; (d) a default in any other agreement, instrument or document between any Borrower or Other Obligor and Bank, or any corporate affiliate of Bank, including, without limitation, any security document referred to above, whether previously, simultaneously, or hereafter entered into; (e) ~~a material adverse change in the financial condition of any Borrower or Other Obligor from that expressed in the financial statement most recently submitted to Bank prior to the date of this Promissory Note, as determined in good faith by Bank in its sole discretion~~; (f) institution of bankruptcy, insolvency, reorganization or receivership proceedings by or against any Borrower or Other Obligor in any state or federal court; (g) the appointment of a receiver, assignee, custodian, trustee or similar official under any federal or state insolvency or creditors' rights law for any property of any Borrower or Other Obligor; ~~(h) failure of any Borrower or Other Obligor to furnish to Bank such collateral or additional collateral as Bank may in good faith request~~; (i) any warranty, representation, or statement to Bank by or on behalf of any Borrower or Other Obligor proving to have been incorrect in any material respect when made or furnished; (j) the occurrence of any event which is, or would be with the passage of time or the giving of notice or both, a default under any indebtedness of any Borrower or Other Obligor to any person other than Bank; (k) any material loss, theft or substantial damage, which is not fully insured, to any of the assets of any Borrower or Other Obligor, or the sale, transfer, lease, encumbrance or other disposition of all or any material part of the assets of any Borrower or Other Obligor other than in the ordinary course of business of Borrower or Other Obligor; (l) the entry of any final judgment against any Borrower or Other Obligor for the payment of money in excess of $5,000.00; (m) the levy upon or attachment of any assets of any Borrower or Other Obligor; (n) ~~the recordation of any federal, state or local tax lien against any Borrower or Other Obligor~~; (o) a change of ownership or dissolution, merger, consolidation, liquidation or reorganization of any Borrower or Other Obligor which is a corporation, partnership or other legal entity; (p) ~~the death of any Borrower or Other Obligor who is a natural person~~; (q) failure of any Borrower or Other Obligor to furnish to Bank such financial information as Bank may require from time to time, including, but not limited to, such financial statements as Bank may require; (r) failure of any Borrower or Other Obligor to comply with all laws, rules, regulations and decrees to which such Borrower or Other Obligor may be subject, the violation of which may have a material adverse effect on the business operation or financial condition of such Borrower or Other Obligor; ~~(s) the acquisition by a Borrower of all or substantially all of the assets, properties or equity interest of any other person or entity without Bank's prior written consent~~; (t) failure of any Borrower to maintain its existence in good standing in the jurisdiction of its organization; (u) any of the licenses or permits which are necessary to the conduct of any Borrower's business as now conducted is not maintained in full force and effect; or (v) ~~the determination in good faith by Bank, in its sole discretion, that the ability of any Borrower or Other Obligor to pay or perform any of their respective obligations to Bank is impaired for any reason~~.

12. REMEDIES. Upon a default, in addition to all other rights and remedies available to the holder of this Promissory Note under any document or agreement between Borrower and Bank or under applicable law, the holder of this Promissory Note, in the holder's sole discretion and without notice or demand, may raise the rate of interest accruing on the unpaid principal balance outstanding under this Promissory Note by two (2) percentage points above the rate of interest otherwise applicable. The Bank shall have no further obligation to provide any Loans to Borrower following: (a) a demand by Bank for payment hereunder; or (b) a default under this Promissory Note. Borrower agrees that a default under this Promissory Note is a default by Borrower under all other liabilities and obligations of Borrower to the holder, and that the holder shall have the right to declare immediately due and payable all liabilities and obligations owed by Borrower to the holder of this Promissory Note.

13. CONFESSION OF JUDGMENT. Borrower irrevocably and unconditionally authorizes any attorney admitted to practice before any court of record in the United States to appear on behalf of Borrower in any court in one or more proceedings, or before any clerk thereof or prothonotary or other court official, and appear for, to confess and enter judgment against Borrower, at any time, whether before or after the occurrence of any default hereunder, with or without averment of default, with or without complaint filed, and without prior notice or opportunity of Borrower for prior hearing, in favor of the holder of this Promissory Note in the full amount outstanding on this Promissory Note (including principal, accrued interest and any and all charges, fees and expenses) plus court costs, plus attorneys' fees equal to fifteen percent (15%) of the unpaid balance of principal, interest, charges, and other sums outstanding hereunder, with release of all errors and without right of appeal. Borrower waives the benefit of any and every statute, ordinance, or rule of court which may be lawfully waived conferring upon Borrower any right or privilege of exemption, homestead rights, appraisement, stay of execution, or supplementary proceedings, or other relief from the enforcement or immediate enforcement of a judgment or related proceedings on a judgment. (To the extend prohibited by applicable law, any judgment obtained by confession shall not constitute a lien on any real property located in Pennsylvania which is the residence of the Borrower.) The authority and power to appear for and enter judgment against Borrower shall not be exhausted by one or more exercises thereof, or by any imperfect exercise thereof, and shall not be extinguished by any judgment entered pursuant thereto; such authority and power may be exercised on one or more occasions from time to time, in the same or different jurisdictions, as often as the holder shall deem necessary or advisable. BORROWER HEREBY ACKNOWLEDGES THAT THE CONFESSION OF JUDGMENT PROVISIONS HEREIN CONTAINED WHICH AFFECT AND WAIVE CERTAIN LEGAL RIGHTS OF BORROWER HAVE BEEN READ, UNDERSTOOD AND VOLUNTARILY AGREED TO BY BORROWER.

14. EXPENSES. Borrower shall pay all costs and expenses, including attorneys' fees (to the extent not prohibited by law) incident to the making of the Loans. Borrower shall pay all costs and expenses incurred by Bank in collecting sums due under this Promissory Note, including without limitation the costs of any lien, judgment or other record searches, appraisals, travel expenses and the like. In addition, if this Promissory Note is referred to an attorney for collection, whether or not judgment has been confessed or suit has been filed, Borrower shall pay all of the holder's costs, fees (including, but not limited to, the holder's attorneys' fees, charges and expenses) and all other expenses resulting from such referral.

15. AMENDMENTS. The fees and charges required to be paid by Borrower in connection with the Loans may, at any time and from time to time, be amended by Bank, upon prior written notice thereof to Borrower and otherwise in compliance with applicable law. Any such amendment shall become effective on the first day of the month in which Borrower obtains a Loan, after the date specified in the notice of amendment (which date shall be not less than thirty (30) days from the date

the notice was mailed to Borrower), or upon such other date as may be required in accordance with applicable law. If Borrower obtains a Loan after the date specified in the notice, the changes in the fees and charges described in the amendment shall apply to all outstanding unpaid indebtedness and obligations under this Promissory Note, whether incurred or arising prior to, upon, or after the effective date of the amendment.

16. NEGOTIABLE INSTRUMENT. Borrower agrees that this Promissory Note shall be deemed to be a negotiable instrument, even though this Promissory Note may not qualify under applicable law, absent this paragraph, as a negotiable instrument.

17. WAIVERS. Borrower, and all parties to this Promissory Note, whether maker, indorser, or guarantor, waive presentment, demand, notice of dishonor and protest.

18. EXTENSIONS OF MATURITY. All parties to this Promissory Note, whether maker, indorser, or guarantor, agree that the maturity of this Promissory Note, or any payment due hereunder, may be extended at any time or from time to time without releasing, discharging, or affecting the liability of such party.

19. NOTICES. Any notice or demand required or permitted by or in connection with this Promissory Note, without implying the obligation to provide any notice or demand, shall be in writing at the address set forth below or to such other address as may be hereafter specified by written notice to Bank by Borrower. Any such notice or demand shall be deemed to be effective as of the date of hand delivery or facsimile transmission, one (1) day after dispatch if sent by telegram, mailgram, overnight delivery, express mail or federal express, or three (3) days after mailing if sent by first class mail with postage prepaid.

20. ASSIGNABILITY. This Promissory Note may be assigned by Bank or any holder at any time.

21. JOINT AND SEVERAL LIABILITY. If more than one person or entity is executing this Promissory Note as Borrower, all liabilities under this Promissory Note shall be joint and several with respect to each of such persons or entities.

22. BINDING NATURE. This Promissory Note shall inure to the benefit of and be enforceable by Bank and Bank's successors and assigns and any other person to whom Bank may grant an interest in Borrower's obligations to Bank, and shall be binding and enforceable against Borrower and Borrower's personal representatives, successors and assigns.

23. INVALIDITY OF ANY PART. If any provision or part of any provision of this Promissory Note shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Promissory Note and this Promissory Note shall be construed as if such invalid, illegal or unenforceable provision or part thereof had never been contained herein, but only to the extent of its invalidity, illegality or unenforceability.

24. MAXIMUM RATE OF INTEREST; COMMERCIAL LOAN. Notwithstanding any provision of this Promissory Note to the contrary, Borrower shall not be obligated to pay interest hereunder in excess of the maximum rate of interest permitted by the laws of any state determined to govern this Promissory Note or the laws of the United States applicable to loans in such state. If any provision of this Promissory Note shall ever be construed to require the payment of any amount of interest in excess of that permitted by applicable law, then the interest to be paid hereunder shall be held subject to reduction to the amount allowed under applicable law, and any sums paid in excess of the interest rate allowed by law shall be applied in reduction of the principal balance outstanding under this Promissory Note. Borrower acknowledges that it has been contemplated at all times by Borrower that the laws of the Commonwealth of Pennsylvania will govern the maximum rate of interest that it is permissible for the holder of this Promissory Note to charge Borrower under this Promissory Note. Borrower warrants that this Promissory Note evidences a loan made solely to acquire or carry on a business or commercial enterprise.

25. CHOICE OF LAW; CONSENT TO VENUE AND JURISDICTION. This Promissory Note shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, even if the Commonwealth of Pennsylvania rules governing conflicts of laws would otherwise require that the laws of another jurisdiction govern this Promissory Note. Borrower consents to the jurisdiction and venue of the courts of any city or county in the Commonwealth of Pennsylvania or to the jurisdiction and venue of the United States District Court for the Middle District of Pennsylvania in any action or judicial proceeding brought to enforce, construe or interpret this Promissory Note.

26. UNCONDITIONAL OBLIGATIONS. Borrower's obligations under this Promissory Note shall be the absolute and unconditional duties and obligations of Borrower and shall be independent of any rights of set-off, recoupment or counterclaim which Borrower might otherwise have against the holder of this Promissory Note, and Borrower shall pay absolutely the payments of principal, interest, fees, charges and expenses required hereunder, free of any deductions and without abatement, diminution or set-off.

27. ACTIONS AGAINST BANK. Any action brought by Borrower against Bank which is based, directly or indirectly, or in whole or in part, upon this Promissory Note or any matter related to this Promissory Note shall be brought only in the courts of the Commonwealth of Pennsylvania.

28. WAIVER OF JURY TRIAL. Borrower (by execution of this Promissory Note) and Bank (by acceptance of this Promissory Note) agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by Borrower, Bank, or any successor or assign of Borrower or Bank on or with respect to this Promissory Note or which in any way relates, directly or indirectly, to the obligations of Borrower to Bank under this Promissory Note, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. BORROWER AND BANK HEREBY EXPRESSLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING. Borrower and Bank acknowledge and agree that this provision is a specific and material aspect of the agreement between the parties and that Bank would not enter into the transaction with Borrower if this provision were not a part of their agreement.

(SIGNATURES CONTAINED ON NEXT PAGE)

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned executes this Promissory Note under seal, as Borrower, as of the date first written above.

WITNESS/ATTEST*:

CCI Construction Co, Inc
(Name of Organization)

7500 Old Gettysburg Rd
(Street Address)

Camp Hill, Pa 17011
(City-State-Zip)

717-909-4224 717-909-4610
(Telephone) (Facsimile)

E M Avery

E. M. AVERY ASSISTANT SECRETARY
(Print Name)

By: [signature], CFO (SEAL)
(Authorized Signature)

Sheri Phillips, CFO
(Print Name and Title)

By: ______________________ (SEAL)
(Authorized Signature)

(Print Name)

(Print Name and Title)

*NOTE: Attestation by a corporate officer of another corporate officer's capacity to sign is required in all corporate transactions.

If Borrower is an individual he or she should sign below:

WITNESS:

______________________ (SEAL)

(Print Name)

(Print Name)

(Street Address)

(City-State-Zip)

(Telephone) (Facsimile)

EXHIBIT A
FILM/Cash Solutions Promissory Note

Account Number: 28864514

Borrower: CCI Construction Co[redacted], Inc.

The terms and provisions of the option checked below are incorporated in and made a part of the FILM/Cash Solutions Promissory Note executed by Borrower to which this Exhibit A is attached:

[X] FILM LOAN OPTION - The following terms apply to this option:

- i) Maximum Line Amount - $4,000,000.00
- ii) Minimum Loan Advance - $0.01
- iii) Incremental Advance Amount - $1.00
- iv) Target Balance - $ 0
- v) Fees - 0

[ ] CASH SOLUTIONS PROTECTION OPTION - The following terms apply to this option:

- i) Maximum Line Amount - ______
- ii) Minimum Loan Advance - $500.00
- iii) Incremental Advance Amount - $500.00
- iv) Target Balance - $______
- v) Fees - ______

[ ] CASH SOLUTIONS MAXIMIZER OPTION - The following terms apply to this option:

- i) Maximum Line Amount - ______
- ii) Minimum Loan Advance - $500.00
- iii) Incremental Advance Amount - $500.00
- iv) Target Balance - $______
- v) Fees - ______
- vi) Balance in Account is not transferred to investments until all Loans are paid in full.

[ ] CASH SOLUTIONS LOAN OPTION - The following terms apply to this option:

- i) Maximum Line Amount - ______
- ii) Minimum Loan Advance - $500.00
- iii) Incremental Advance Amount - $500.00
- iv) Target Balance - $______
- v) Fees - ______

WITNESS/ATTEST:

____

BORROWER:

CCI Construction Co, Inc

By: [signature], CFO (SEAL)
Name: Sheri Phillips
Title: CFO

If Borrower is an individual he or she should sign below:

____

______________________ (SEAL)
Name: ______________________

PA-FCS-PN
10/13/98

INTER-OFFICE MEMORANDUM

TO: File

FROM: Craig Schwartz

DATE: 11/4/99

RE: CCI Construction

A meeting was held with Sherri Phillips CFO and John Ortenzio President of CCI and Michael Zarcone to discuss the requested financing of a line of credit increase.

We decided that an increase of $1,200,000.00 million will be done on a temporary basis and CCI will get an additional $500,000 from private sources. This should be sufficient to meet their current cash flow shortage.

DEFENDANT'S EXHIBIT Schwartz 8

allfirst

Allfirst Bank
P.O. Box 2961
Harrisburg, PA 17105-2961

November 5, 1999

Mr. John M Ortenzio, President
CCI Construction Co., Inc
P.O. Box 8800
Mechanicsburg, PA 17055

Dear John:

I am pleased to inform you that Allfirst Bank (hereinafter "Bank") has approved a $1,200,000 partially secured line of credit to CCI Construction Co., Inc. (hereinafter "Borrower") as follows:

Principal Amount of Line:	$1,200,000.00
Interest Rate:	Bank's Base Rate as in effect from time to time, minus 1/2%.
Repayment:	Interest payable monthly, principal on demand.
Use of Proceeds:	Finance work in progress and accounts receivable.
Collateral:	Specific equipment financed, including titled vehicles

Borrowings under Loan will bear interest at an annual rate equal to the Bank's Base Rate as in effect from time to time, minus one-half percent. This interest will change when and as the Bank's Base Rate changes. Interest will be calculated on the basis of the actual number of days in the current calendar year divided by 360. Interest will be payable monthly upon submission of the Bank's notice therefor.

Borrowings under the Loan will be payable on demand. If no demand is made, the Loan will expire and all borrowings will be due and payable, together with interest thereon, on March 31, 2000.

Borrowings under the Loan shall be limited to 80% of the Borrower's qualified accounts receivable which are less than 90 days past due, excluding retainages.

The Loan will be supported by the personal Suretyship of John M. Ortenzio limited to $1,200,000.

The Borrower shall furnish the Bank with financial reporting as follows:

1. Annual CPA- audited financial statements of CCI Construction Co., Inc.
2. Quarterly work in process reports for CCI Construction, Co., Inc.
3. Quarterly Company prepared financial statements of CCI Construction Co., Inc.
4. Monthly borrowers certification with monthly accounts receivable aging and listing.
5. Annual personal financial statement of John M. Ortenzio.

The Borrower shall maintain a primary business deposit relationship with the Bank.

The Borrower will not create, assume or permit to exist, any mortgage, pledge, lien or encumbrance of or upon, or security interest in any of Borrower's property or assets now owned or hereafter acquired in favor of the Bank, other than purchase money, without prior written consent of the Bank.

The availability to the Loan is contingent upon the Borrower and the Bank entering into mutually acceptable loan documentation setting forth the terms and conditions contained herein and such other terms and conditions, covenants, warranties and representations as may be required by the Bank and be mutually acceptable to the Borrower and the Bank. All terms and conditions contained herein shall survive the execution of such loan documentation.

The commitment is contingent upon the right of the Bank at any time hereafter and from time to time to review the commitment, to adjust terms and conditions, or to discontinue the commitment should the Bank in the reasonable exercise of its sole business discretion deem it necessary to do so.

CCI Construction Co., Inc.
November 5, 1999
Page Three

Please indicate the acceptability of these terms and conditions by dating, signing, and returning an executed copy of this letter no later than November 19, 1999.

Very truly yours,

Craig J. Schwartz
Vice President

CJS/mas

Enclosure

ACKNOWLEDGED AND ACCEPTED THIS DAY OF , 1999.

ATTEST:

BY: Sec.
Title: Sec/Treas

CCI CONSTRUCTION CO., INC.

BY:
Title: Pres

WITNESS:

SURETY:

John M. Ortenzio

allfirst

EXHIBIT
Ortenzio 2
2/13/01 TLS

SURETYSHIP AGREEMENT

under the $1,200,000 commercial loan note dated 11-8-99 JMO CP

Date 11-8-99

For value received, the Undersigned, jointly and severally, hereby unconditionally agree to make prompt payment of all obligations, indebtedness and liabilities due Allfirst Bank, a Maryland state-chartered commercial bank, hereinafter called "Bank," ~~of any kind, whether now existing or hereafter arising,~~ due or which may become due, whether by acceleration or otherwise, ~~absolute or contingent, joint or several, direct or indirect, secured or unsecured,~~ JMO CP by CCI Construction Co., Inc. hereinafter called "Borrower," all such obligations being hereinafter further described and collectively called the "Liabilities," and the Undersigned agree(s) to pay all expenses (including attorneys' fees and legal expenses, whether or not litigation is commenced) paid or incurred by the Bank in endeavoring to collect the Liabilities, or any part thereof, whether or not bankruptcy has been declared, and in enforcing this Suretyship Agreement. The liability of the Undersigned hereunder is a primary and direct obligation without regard to any other obligor or security or collateral held by the Bank.

The Undersigned hereby waive all notices of any character whatsoever with respect to this Suretyship Agreement and the Liabilities of the Borrower for which the Suretyship Agreement has been executed, including but not limited to notice of the acceptance hereof and reliance hereon and notice of default by the Borrower. The Undersigned hereby give consent to the Bank to the taking of, or failure to take, from time to time, without notice to the Undersigned, any action of any nature whatsoever with respect to the Liabilities of the Borrower, with respect to any rights against any person or persons, including the Borrower and any of the Undersigned, in any property, including, but not limited to, any postponements, compromises, indulgences, waivers, extensions, exchanges, releases, and satisfactions. The Undersigned shall remain fully liable on this Suretyship Agreement, notwithstanding any of the foregoing.

This Suretyship Agreement shall in all respects be a continuing, absolute and unconditional one, and shall remain in full force and effect (notwithstanding, without limitation, the death, incompetency or dissolution of any of the Undersigned or that at any time, or from time to time, all Liabilities may have been paid in full). This Suretyship Agreement is subject to discontinuance as to any of the Undersigned only upon actual receipt by the Bank of written notice from such Undersigned, or any person duly authorized and acting on behalf of such Undersigned, of the discontinuance hereof as to such Undersigned; provided, however, that no such notice of discontinuance shall affect or impair any of the agreements and obligations of such Undersigned hereunder with respect to (a) any and all Liabilities existing prior to the time of actual receipt of such notice by the Bank, (b) any and all Liabilities created or acquired thereafter pursuant to any previous binding commitments made by the Bank, (c) any and all extensions or renewals of any of the foregoing, (d) any and all interest on any of the foregoing, and (e) any and all expenses paid or incurred by the Bank in endeavoring to collect any of the foregoing and in enforcing this Suretyship Agreement against such Undersigned. All obligations of the Undersigned under this Suretyship Agreement shall, notwithstanding any such notice of discontinuance, remain fully in effect until all Liabilities not subject to an effective notice of discontinuance (including any extensions or renewals of any thereof) and all such interest and expenses shall have been paid in full. Any notice of discontinuance by or on behalf of any one of the Undersigned shall not affect or impair the obligations hereunder of any other of the Undersigned.

At the option of Bank, all Liabilities of Borrower shall become immediately due and payable by the Undersigned, without demand or notice, in the event any of the following shall occur: (a) Borrower shall fail to make any payment or meet any other liability when due; (b) Borrower or the Undersigned shall fail to observe or perform any obligation, term, condition or provision of Borrower under any document evidencing or securing the Liabilities, this Suretyship Agreement or any other agreement, document, certificate, instrument of security, suretyship or guaranty given by Borrower to Bank; (c) Any representation, warranty or certificate made or furnished by Borrower to Bank, in connection with the Liabilities or any other agreement, document, certificate, instrument of security, suretyship or guaranty given by Borrower to Bank or in any certificate, financial statement or separate assignment made reunder shall be materially false; (d) Borrower or any of the Undersigned shall make an assignment for the benefit of creditors; (e) Proceedings in kruptcy or for reorganization of Borrower or any of the Undersigned or for the readjustment of any of their debts under the Bankruptcy Act, as nded, or in any part thereof, or under any other act or law, whether state or federal, for the relief of debtors now or hereafter existing, shall be nenced by or against Borrower or the Undersigned; (f) A receiver or trustee shall be appointed for Borrower or any of the Undersigned or for any tantial part of their assets; or any proceedings are instituted for the dissolution, or the full or partial liquidation, of Borrower or any of the Undersigned; (g) Material adverse changes in the financial condition of the Borrower or any of the Undersigned; (h) A death of Borrower or any of the Undersigned or, if Borrower or the Undersigned is a partnership, the death of any general partner; or (i) Borrower or any of the Undersigned ceases doing business as a going concern.

As security for the Liabilities hereunder, the Undersigned hereby grants Bank a security interest in the following:
NONE

Together with a right, without demand or notice of any kind, at any time and from time to time when any amount shall be due and payable by the Undersigned hereunder and in such order of application as the Bank may elect, to set-off against all monies, deposits or other property of any kind, without limitation, owned by the Undersigned or in which the Undersigned has a joint or contingent interest and which are in possession of Bank for any reason whatsoever

The Undersigned further agree that, if at any time, any part of any payment theretofore applied by the Bank to any of the Liabilities is or must be returned by the Bank for any reason whatsoever (including, without limitation, the insolvency, bankruptcy or reorganization of the Borrower), such Liabilities shall, for the purposes of this Suretyship Agreement, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Bank, and this Suretyship Agreement shall continue to be effective or be reinstated, as the case may be as to such Liabilities, all as though such application by the Bank had not been made. In such an event the Undersigned hereby waives any right of contribution, subrogation or indemnification against the Borrower, for a period of twelve (12) months subsequent to the last payment made or due to be made from Borrower to Bank.

The Bank may, from time to time, whether before or after any discontinuance of this Suretyship Agreement, at its sole discretion and without notice to the Undersigned (or any of them), take any or all of the following actions: (a) retain or obtain a security interest in any property to secure any of the Liabilities or any obligation hereunder; (b) retain or obtain the primary or secondary obligation of any obligor or obligors in addition to the Undersigned, with respect to any of the Liabilities; (c) extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the Liabilities, or release or compromise any obligation of any of the Undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Liabilities, (d) release its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Liabilities or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property; and (e) resort to the lersigned (or any of them) for payment of any of the Liabilities, whether or not the Bank shall have resorted to any property securing any of the ilities for payment of any of the Liabilities, or any obligation hereunder or shall have proceeded against any other of the Undersigned or any other gor primarily or secondarily obligated with respect to any of the Liabilities

Any amounts received by the Bank from whatsoever source on account of the Liabilities may be applied by Bank toward the payment of such of the ilities and in such order of application, as the Bank may from time to time elect; and, notwithstanding any payments made by or for the account of the Undersigned pursuant to this Suretyship Agreement, the Undersigned shall not be subrogated to any rights of the Bank until such time as this Suretyship Agreement shall have been discontinued as to all of the Undersigned and the Bank shall have received payment of the full amount of all Liabilities and of all obligations of the Undersigned hereunder. The Bank shall not be obligated under any theory of law relating to the marshalling of payment received or security interest granted under the terms of this Suretyship Agreement

The Bank may, from time to time, · pefore or after any discontinuance of this Suretyship greement, without notice to the undersigned (or an of, them), assign or transfer any or al: of iabilities or any interest therein; and, notwithstanding any such assignment or transfer or any subsequer assignment or transfer thereof, such Liabilities shall be and remain Liabilities for the purpose of this Suretyship Agreement and each and every immediat and successive assignee or transferee of any of the Liabilities or of any interest therein shall, to the extent of the interest of such assignee or transferee i the Liabilities, be entitled to the benefits of this Suretyship Agreement to the same extent as if such assignee or transferee were the Bank; providec however, that unless the Bank shall otherwise consent in writing, the Bank shall have an unimpaired right prior and superior to that of any such assigne or transferee, to enforce this Suretyship Agreement for the benefit of the Bank, as to those of the Liabilities which the Bank has not assigned c transferred.

*under 1,200,000 commercial loan note dated 11-8-99 JTMO CP

No modification or waiver of any of the provisions of this Suretyship Agreement shall be binding upon the Bank except as expressly set forth in writing duly signed by each of the Undersigned and the Bank. No action of the Bank permitted hereunder shall in any way affect or impair the rights of th Bank and the obligation of the Undersigned under this Suretyship Agreement. For the purpose of this Suretyship Agreement, Liabilities shall include al obligations of the Borrower to the Bank* notwithstanding any right or power of the Borrower or anyone else to assert any claim or defense as to the invalidity or unenforceability of any such obligation and no such claim or defense shall affect or impair the obligations of the Undersigned hereunder.

The Liability of the Undersigned for Liabilities of Borrower incurred on or prior to the date hereof shall not exceed, at any time, the aggregate principal amount of ONE MILLION TWO HUNDRED THOUSAND & NO/100 DOLLARS ($ 1,200,000.00), plus interest as stated in the evidence of indebtedness given by Borrower to Bank and fifteen percent (15%) attorneys' commission; provided that this Suretyship Agreement shall also be applicable to and extend to any and all Liabilities, plus interest and costs as aforesaid, of Borrower arising after the date hereof even if the total of such Liabilities plus the Liabilities outstanding on or prior to the date hereof exceed the aforementioned aggregate principal amount. If no limitation is inserted in this paragraph, there is no limit to the liability of the Undersigned to the Bank.

The creation or existence from time to time of Liabilities in excess of any amount to which the right of recovery under this Suretyship Agreement is limited is hereby authorized, without notice to the Undersigned (or any of them), and shall in no way affect or impair the rights of the Bank and the obligation of the Undersigned under this Suretyship Agreement.

The Undersigned, jointly and severally, do hereby authorize and empower any prothonotary or clerk or attorney of any court of record of Pennsylvania or elsewhere, to appear for and confess judgment against any or all of the Undersigned in favor of Bank for the total liability of the Undersigned as set forth herein together with interest thereon, with or without declaration, with costs of suit, release of errors, without stay of execution or garnishment and with fifteen percent (15%) for collection fees, and waive the right of inquisition, and the benefit of all exemption laws now or hereinafter enacted, and agree to condemnation and the sale of real estate or personal property, or a writ of execution.

In the event the Bank acquires any property securing this Suretyship Agreement after a foreclosure sale as to real property or a public auction sale as to personal property, the Undersigned agrees to indemnify and hold the Bank harmless from any loss, costs, or expense which the Bank may sustain as a result of: (a) selling the real or personal property so acquired for less than the total sums owed by the Borrower to the Bank, provided, however, that any such sale by the Bank is done in a commercially reasonable manner or (b) any action brought against the Bank under §548 or §544(b) of the United States *Bankruptcy Code*, as amended, on the ground that the consideration paid by the Bank for the real or personal property was not "fair equivalent value," within the contemplation of §544(b) of the United States *Bankruptcy Code*, as amended, or any applicable state fraudulent conveyance act.

The Undersigned waive and release the Bank from any damages which the Undersigned may incur as a result of any intentional or unintentional or negligent action or inaction of the Bank impairing, diminishing, or destroying any of the Undersigned's rights of subrogation which the Undersigned may have upon payment of any of the Borrower's obligations. The Undersigned acknowledges previously having waived, under certain conditions, any such rights.

The Undersigned hereby agrees that this Suretyship Agreement shall apply to ~~any~~ 1,200,000 commercial loan note dated 11-8-99 JTMO CP obligation which the Bank may incur as the result of any payment to Bank by or on behalf of the Borrower which is determined to be a preference payment benefiting the undersigned.

If a photostatic copy hereof shall have been filed in any of said proceedings, it shall not be necessary to file the original as a warrant of attorney. The foregoing warrant and power to confess judgment shall not be deemed to have been exhausted by any single exercise thereof, whether or not any such exercise shall be held by any court to be invalid, voidable or void, but may be exercised from time to time, as often as the Bank shall elect, until all sums ·ayable or that may become payable by each of the Undersigned have been paid in full.

A subsequent guaranty or suretyship by the Undersigned or any other guarantor or surety of the Borrower's Liabilities given to the Bank shall not be emed to be in lieu of or to supersede or terminate this Suretyship Agreement but shall be construed to be additional or supplementary unless otherwise ressly provided therein; and in the event the Undersigned or any other guarantor or surety has given to the Bank a previous guaranty or Suretyship reement, this Suretyship Agreement shall be construed to be additional or supplementary, and not to be in lieu thereof or to terminate such previous Suretyship Agreement, guaranty or guaranties unless expressly so provided herein.

This Suretyship Agreement shall be binding upon the Undersigned, and upon the heirs, legal representatives, successors and assigns of the Undersigned, and to the extent that the Borrower or any of the Undersigned is an entity such as a partnership, limited partnership, limited liability company, corporation or any other similar entity, all references herein to the Borrower and to the Undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such entity. If more than one party shall execute this Suretyship Agreement, the term "Undersigned" as used herein shall mean all parties executing this Suretyship Agreement and each of them, and all such parties shall be jointly and severally obligated hereunder.

This Suretyship Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania without giving effect to choice of law rules. Wherever possible each provision of this Suretyship Agreement shall be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Suretyship Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Suretyship Agreement.

INTENDING TO BE LEGALLY BOUND HEREBY, the Undersigned have set their respective hands and seals the day and year first above written.

WITNESS OR ATTEST:

(SURETY) John M Ortenzio

Title ______________________ By: ______________________ Title: ______________________ (SEAL)

Title ______________________ By: ______________________ Title ______________________ (SEAL)

Title: ______________________ By: ______________________ Title: ______________________ (SEAL)

F

CCI CONSTRUCTION COMPANY, INC.

YEARS ENDED
DECEMBER 31, 1998 AND 1997

EXHIBIT
3
3/13/02 HMH

CCI CONSTRUCTION COMPANY, INC.

YEARS ENDED DECEMBER 31, 1998 AND 1997

CONTENTS

BROWN SCHULT[Z]
SHERIDAN FRIT[Z]

Independent Auditors' Report

Board of Directors
CCI Construction Company, Inc.
Mechanicsburg, Pennsylvania

We have audited the accompanying balance sheets of CCI Construction Company, Inc. as of December 31, 1998 and 1997 and the related statements of income, shareholder's equity and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of CCI Construction Company, Inc. as of December 31, 1998 and 1997 and the results of its operations and its cash flows for the years then ended, in conformity with generally accepted accounting principles.

Our audits of the financial statements were made for the purpose of forming an opinion on the basic financial statements taken as a whole. The accompanying information is presented for purposes of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Brown Schultz Sheridan & Fritz

February 10, 1999

CERTIFIED PUBLIC ACCOUNT[ANTS]
BUSINESS ADVI[SORS]
A PROFESSIONAL CORPORA[TION]
1011 MUMMA R[OAD]
WORMLEYSBURG, PA
PO BOX 6
HARRISBURG, PA 17106-
717-761-
PA: 800-294-
FAX: 717-737
1725 OREGON
LANCASTER, PA 1
717-560
PA: 800-294
FAX: 717-560
WEBSITE: WWW.BSSF

CCI CONSTRUCTION COMPANY, INC.

BALANCE SHEETS - DECEMBER 31, 1998 AND 1997

ASSETS

	1998	1997
Current assets:		
Cash and cash equivalents	$ 2,429,866	$ 1,128,337
Investments in marketable securities	631,481	3,702,992
Accounts receivable, trade:		
Customers:		
Current	5,964,311	8,230,674
Retained	1,822,224	1,121,610
Affiliates	365,756	3,485
Note receivable		22,569
Costs and estimated earnings in excess of billings on uncompleted contracts	6,341,726	1,072,281
Prepaid expenses	170,232	6,185
Shop inventory	38,161	639
Total current assets	17,763,757	15,288,772
Property and equipment:		
Automobiles and trucks	1,269,567	427,342
Furniture	851,738	553,587
Machinery and equipment	5,947,290	1,323,233
Other	344,128	72,453
	8,412,723	2,376,615
Less accumulated depreciation	1,651,485	920,919
	6,761,238	1,455,696
Other assets:		
Cash surrender value of officer's life insurance	55,453	
Investments	34,000	
	89,453	
	$ 24,614,448	$ 16,744,468

See notes to financial statements.

LIABILITIES AND SHAREHOLDER'S EQUITY

	1998	1997
Current liabilities:		
Accounts payable, trade:		
Current	$ 10,974,274	$ 7,846,395
Retained	2,180,967	1,078,950
Notes payable		815,781
Current portion of long-term debt	1,338,280	
Accrued expenses	333,060	808,601
Taxes withheld and accrued	91,601	58,023
Billings in excess of costs and estimated earnings on uncompleted contracts	288,208	681,924
Total current liabilities	15,206,390	11,289,674
Long-term debt, net of current portion	4,164,375	
Total liabilities	19,370,765	11,289,674
Shareholder's equity:		
Common stock, $1 par, 1,000 shares authorized; 39 shares issued and outstanding	39	39
Capital in excess of par	9,758	9,758
Retained earnings	5,254,834	5,208,489
Accumulated other comprehensive income (loss), unrealized gain (loss) on marketable securities	(20,948)	236,508
	5,243,683	5,454,794
	$ 24,614,448	$ 16,744,468

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF INCOME

YEARS ENDED DECEMBER 31, 1998 AND 1997

	1998	1997
Revenue	$ 52,534,453	$ 34,921,676
Cost of contracts	51,145,382	32,617,473
Gross profit	1,389,071	2,304,203
General and administrative expenses	1,505,700	1,954,380
Income (loss) from operations	(116,629)	349,823
Other income (expense):		
Gain (loss) on sale of:		
Marketable securities and cash equivalents	260,927	(6,016)
Property and equipment	10,069	(2,920)
Interest	(161,296)	
Investment	151,592	367,538
Miscellaneous	(85,622)	(1,546)
	175,670	357,056
Net income	$ 59,041	$ 706,879

See notes to financial statements.

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF SHAREHOLDER'S EQUITY

YEARS ENDED DECEMBER 31, 1998 AND 1997

	Common stock	Capital in excess of par	Retained earnings	Accumulated other comprehensive income (loss)	Total
Balance, December 31, 1996	$ 39	$ 9,758	$ 4,768,011	$ 42,867	$ 4,820,675
Comprehensive income:					
Net income			706,879		706,879
Other comprehensive income:					
Unrealized holding gains arising during the period on marketable securities				187,348	187,348
Add reclassification adjustment				6,293	6,293
					193,641
Comprehensive income					900,520
Distributions			(266,401)		(266,401)
Balance, December 31, 1997 (carried forward)	39	9,758	5,208,489	236,508	5,454,794

(continued)

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF SHAREHOLDER'S EQUITY (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

	Common stock	Capital in excess of par	Retained earnings	Accumulated other comprehensive income (loss)	Total
Balance, December 31, 1997 (brought forward)	$ 39	$ 9,758	$ 5,208,489	$ 236,508	$ 5,454,794
Comprehensive loss:					
Net income			59,041		59,041
Other comprehensive income (loss):					
Unrealized holding gains arising during the period on marketable securities				3,469	3,469
Less reclassification adjustment				(260,925)	(260,925)
					(257,456)
Comprehensive loss					(198,415)
Distributions			(12,696)		(12,696)
Balance, December 31, 1998	$ 39	$ 9,758	$ 5,254,834	$(20,948)	$ 5,243,683

See notes to financial statements.

C 7696

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF CASH FLOWS

YEARS ENDED DECEMBER 31, 1998 AND 1997

	1998	1997
Cash flows from operating activities:		
Net income	$ 59,041	$ 706,879
Adjustments:		
Depreciation	793,014	156,504
(Gain) loss on sale of:		
Property and equipment	(10,069)	2,920
Marketable securities	(260,927)	6,293
(Increase) decrease in:		
Accounts receivable	1,203,478	(5,516,738)
Costs and estimated earnings in excess of billings on uncompleted contracts	(5,269,445)	(692,618)
Prepaid expenses	(164,047)	47,047
Shop inventory	(37,522)	(639)
Cash surrender value of officer's life insurance	(55,453)	
Increase (decrease) in:		
Accounts payable	4,229,896	4,912,287
Accrued expenses	(475,541)	530,442
Taxes withheld and accrued	33,578	47,166
Billings in excess of costs and estimated earnings on uncompleted contracts	(393,716)	172,293
Total adjustments	(406,754)	(335,043)
Net cash provided by (used in) operating activities	(347,713)	371,836
Cash flows from investing activities:		
Purchase of:		
Investments	(161,670)	(11,093,130)
Property and equipment	(98,793)	(560,929)
Repayment of note receivable	22,569	9,120
Proceeds from:		
Sale and maturities of investments	3,202,652	9,381,163
Sale of property and equipment	28,502	13,864
Net cash provided by (used in) investing activities	2,993,260	(2,249,912)

(continued)

CCI CONSTRUCTION COMPANY, INC.

STATEMENTS OF CASH FLOWS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

	1998	1997
Cash flows from financing activities:		
Distributions to shareholder	$(12,696)	$(266,401)
Proceeds from issuance of notes payable and long-term debt	17,990,666	
Repayment of notes payable and long-term debt	(19,321,988)	(73,301)
Net cash used in financing activities	(1,344,018)	(339,702)
Net increase (decrease) in cash and cash equivalents	1,301,529	(2,217,778)
Cash and cash equivalents, beginning of year	1,128,337	3,346,115
Cash and cash equivalents, end of year	$ 2,429,866	$ 1,128,337
Supplemental disclosure of cash flow information:		
Cash paid during the year for interest	$ 161,296	$ 1,707
Noncash activities:		
Net increase (decrease) in unrealized gain on marketable securities (see statements of shareholder's equity)	$(257,456)	$ 193,641
Notes payable incurred for the acquisition of new equipment	$ 6,018,196	$ 889,082

See notes to financial statements.

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CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS

YEARS ENDED DECEMBER 31, 1998 AND 1997

1. Summary of significant accounting policies:

Operations and operating cycle:

The Company constructs and renovates commercial buildings primarily under fixed-price contracts in the eastern United States. The Company's receivables are concentrated among customers in this geographic area. The Company extends credit to its customers and generally requires no collateral.

The length of the Company's contracts varies but is typically between one to two years. In accordance with normal practice in the construction industry, the Company includes asset and liability accounts relating to construction contacts in current assets and liabilities even when such amounts are realizable or payable over a period in excess of one year.

Use of estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Revenue and cost recognition:

Revenues from construction contracts are recognized on the percentage-of-completion method, measured by the percentage of direct cost incurred to date to estimated total direct cost for each contract. That method is used because management considers direct cost to be the best available measure of progress on the contracts. Because of inherent uncertainties in estimating costs, it is at least reasonably possible that the estimates used will change within the near term.

For purposes of determining percentage of completion estimates, contract costs include all direct material, labor and subcontracting costs and other direct costs related to contract performance. Indirect costs and general and administrative costs are charged to expense as incurred. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are first determined. Changes in job performance, job conditions and estimated profitability may result in revisions to costs and income and are recognized in the period in which the revisions are determined. An amount equal to contract costs attributable to claims is included in revenues when realization is probable and the amount can be reliably estimated.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

1. **Summary of significant accounting policies (continued):**

Revenue and cost recognition (continued):

The asset, "Costs and estimated earnings in excess of billings on uncompleted contracts," represents revenues recognized in excess of amounts billed. The liability, "Billings in excess of costs and estimated earnings on uncompleted contracts," represents billings in excess of revenues recognized.

Cash and cash equivalents:

For purposes of reporting cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

Marketable securities:

Marketable securities are reported at fair value, with unrealized gains and losses excluded from earnings and reported in a separate component of stockholder's equity. Fair value of the marketable securities is based on quoted market prices for those or similar securities or quotes from brokers. Gains and losses are determined using the specific identification method when securities are sold.

Property and equipment:

Property and equipment are stated at cost. Depreciation is provided using straight-line and accelerated methods over the estimated useful lives of the assets.

Change in presentation:

During 1998, the Company adopted Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income (SFAS No. 130). SFAS No. 130 requires the reporting of comprehensive income in addition to net income from operations. Comprehensive income is a more inclusive financial reporting methodology that includes disclosure of certain financial information that historically has not been recognized in the calculation of net income. SFAS No. 130 requires that the earlier year provided for comparative purposes be reclassified to conform to the statement.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

2. **Cash and cash equivalents:**

Cash and cash equivalents consist of the following:

	1998	1997
Cash	$ 374,464	$ 451
Money market funds	1,035	403,714
Repurchase agreements	2,054,367	724,172
	$ 2,429,866	$ 1,128,337

At December 31, 1998, the amount of deposits in cash held at the bank exceeded the Federal Deposit Insurance Corporation (FDIC) insurance by $867,883. The money market funds and the repurchase agreements are not insured by the FDIC. The repurchase agreements sold by a bank were held in custody by this bank for the account of CCI Construction Company, Inc. and were invested in securities, which are not pledged as collateral.

3. **Marketable securities:**

The cost or amortized cost and the aggregate fair value of investments in the debt and equity securities at December 31, 1998 and 1997 are as follows:

	1998		
	Cost or amortized cost	Gross unrealized losses	Estimated fair value
Available-for-sale securities, mutual funds	$ 652,429	$ 20,948	$ 631,481

	1997			
	Cost or amortized cost	Gross unrealized losses	Gross unrealized gains	Estimated fair value
Available-for-sale securities:				
Mutual funds	$ 3,386,480	$ 16,845	$ 253,465	$ 3,623,100
Obligations of states and political subdivisions	80,004	112		79,892
	$ 3,466,484	$ 16,957	$ 253,465	$ 3,702,992

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

3. **Marketable securities (continued):**

	1998	1997
Cost of securities sold	$ 2,941,725	$ 9,387,456
Proceeds from sale	3,202,652	9,381,163
Gross realized gains	262,391	
Gross realized losses	1,464	6,293

4. **Uncompleted contracts:**

	1998	1997
Contract costs	$ 42,225,606	$ 27,920,734
Estimated earnings thereon	3,130,223	1,638,199
	45,355,829	29,558,933
Less billings applicable thereto	39,302,311	29,168,576
	$ 6,053,518	$ 390,357
Included in the balance sheet as:		
Costs and estimated earnings in excess of billings on uncompleted contracts	$ 6,341,726	$ 1,072,281
Billings in excess of costs and estimated earnings on uncompleted contracts	(288,208)	(681,924)
	$ 6,053,518	$ 390,357

5. **Long-term debt:**

Long-term debt consists of the following:

	1998
Obligations to various financing corporations due in current monthly installments totaling $116,074, including interest at fixed rates approximating 7%. The notes, which are secured by the financed equipment, mature at various dates through August 2003.	$ 3,964,581

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CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

5. Long-term debt (continued):

	1998
Borrowings under a $2,000,000 bank equipment line of credit are secured by the financed equipment. The agreement requires the December 31, 1998 balance to be repaid by December 2003 in monthly installments of $30,238, including interest at a fixed rate of 6.7%.	$ 1,538,074
Total long-term debt	5,502,655
Less current portion	1,338,280
Long-term debt portion	$ 4,164,375

Aggregate principal payments due on long-term debt for the five years subsequent to December 31, 1998 are as follows:

1999	$ 1,338,280
2000	1,415,424
2001	1,242,569
2002	961,559
2003	544,823
	$ 5,502,655

6. Operating line of credit:

The Company has available a $2,000,000 unsecured operating line of credit expiring on April 30, 1999 which requires interest at the bank's prime rate less 1/2%. The Company has no outstanding balance on the line at December 31, 1998.

7. Rent expense:

Various equipment and operating facilities are leased under noncancellable agreements. Total rent expense for all leases, including the related party lease discussed in Note 8, was $1,689,666 and $432,492 in 1998 and 1997, respectively.

The aggregate minimum rental commitments under all noncancellable leases at December 31, 1998 totaling $28,639 are due in 1999.

CCI CONSTRUCTION COMPANY, INC.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)

YEARS ENDED DECEMBER 31, 1998 AND 1997

8. **Related party transactions:**

The Company is leasing an operating facility owned by its sole shareholder through March 31, 1999. The lease requires a monthly rental payment of $4,037. Rent expense for this facility was $48,444 and $45,000 for 1998 and 1997, respectively.

Effective April 1, 1999, the Company will begin leasing an operating facility from Mechanicsburg Land Company, which is owned by the Company's sole shareholder, on a year-to-year basis. The initial lease, which expires December 31, 1999, requires monthly lease payments of $14,329. Additionally, the Company entered into a contract for the construction of this facility with Mechanicsburg Land Company. Billings of $339,203 were included in accounts receivable as of December 31, 1998.

During 1997, the Company incurred warranty insurance expense of $825,000 with Pennsylvania Contractors Insurance Company, a corporation under common control. These costs are allocated as direct cost of contracts. There were no such costs in 1998.

During 1998, two insurance claims for contract losses incurred of $900,000 were paid by Pennsylvania Contractors Insurance Company. These claims were covered under the terms of a remedial work period insurance policy.

In addition, Pennsylvania Contractors Insurance Company has guaranteed a claim of $1,162,460 filed by the Company with a contract owner. If the owner fails to pay all or any part of this claim, the insurance company will pay the unpaid portion.

9. **Income taxes:**

No provision has been made for federal or state income taxes. Under provisions of the Internal Revenue Code and the Commonwealth of Pennsylvania Tax Act, the Company has elected not to be taxed as a corporation and the sole shareholder has consented to include the income in his individual return.

10. **Year 2000 issues:**

Like any other company, advances and changes in available technology can significantly affect the business and operations of the Company. A challenging problem exists as many computer systems worldwide do not have the capability of recognizing the year 2000 or years thereafter. No easy technology "quick fix" has yet been developed for this problem. While the Company has not requested verification of its year 2000 status from its auditors, it believes its computer systems will effectively deal with transactions in the year 2000 and beyond. This "Year 2000 Computer Problem" creates risk for the Company from unforeseen problems from third parties with whom the Company deals on financial transactions. Failures of the third parties' computer systems could have an impact to the Company's ability to conduct its business. The effect, if any, is unknown at this time.

CCI CONSTRUCTION COMPANY, INC.

COST OF CONTRACTS

YEARS ENDED DECEMBER 31, 1998 AND 1997

	1998	1997
Direct costs:		
Labor	$ 6,457,982	$ 2,886,054
Payroll taxes	702,129	335,936
Employee benefits	667,597	677,477
Equipment	111,207	41,373
Equipment rental	1,625,224	381,924
Materials	10,371,108	4,259,253
Other	1,745,316	1,679,129
Subcontractors	27,802,562	22,099,706
	49,483,125	32,360,852
Indirect costs:		
Salaries	528,517	86,208
Payroll taxes	61,224	11,217
Employee benefits	70,560	8,324
Blueprints	163	6
Depreciation	687,512	95,723
Dues and permits	5,340	710
Employee recruitment	44,621	7,151
Insurance	4,486	716
Office supplies and expense	53,393	8,112
Postage	2,187	253
Professional services	37,338	
Rent	40,731	8,636
Repairs and maintenance	12,655	3,648
Safety	2,732	2,157
Telephone	28,926	11,802
Temporary help	7,591	
Trade books and journals	1,892	556
Training and seminars	8,303	
Travel and entertainment	10,290	728
Utilities	10,397	1,413
Warehouse expenses	43,399	9,261
	1,662,257	256,621
Total cost of contracts	$ 51,145,382	$ 32,617,473

CCI CONSTRUCTION COMPANY, INC.

GENERAL AND ADMINISTRATIVE EXPENSES

YEARS ENDED DECEMBER 31, 1998 AND 1997

	1998	1997
Salaries:		
Officers	$ 353,939	$ 1,038,273
Office	480,807	410,023
Payroll taxes	60,247	73,399
Employee:		
Benefits	53,857	33,722
Recruitment	4,379	2,237
Advertising	3,067	1,038
Bad debt	22,569	
Bank charges	5,111	3,667
Blueprints	17,551	13,507
Company sponsored activities	2,373	1,098
Contributions	14,220	3,030
Depreciation	105,502	60,781
Dues	16,335	8,058
Insurance	12,399	12,162
Licenses and taxes	44,559	44,270
Miscellaneous		265
Office supplies	50,617	18,875
Postage	8,967	7,914
Professional services	109,543	95,337
Rent	23,711	33,744
Repairs and maintenance	6,555	7,689
Telephone	19,164	31,328
Temporary help	1,719	
Trade books and journals	24,222	22,995
Training and seminars	5,938	1,086
Travel and entertainment	30,687	5,948
Utilities	27,662	23,934
Total general and administrative expenses	$ 1,505,700	$ 1,954,380

CCI CONSTRUCTION COMPANY, INC.

EARNINGS FROM CONTRACTS

YEAR ENDED DECEMBER 31, 1998

	Revenues earned	Cost of revenues earned		Gross profit (loss)
Contracts completed during the year	$ 13,541,950	$ 13,969,824	(a)	$(427,874)
Contracts-in-progress at year-end	38,721,607	35,389,315	(a)	3,332,292
Construction management contracts	83,777	20,444	(a)	63,333
Time and material jobs	187,119	103,542	(a)	83,577
	52,534,453	49,483,125		3,051,328
Indirect costs		1,662,257		(1,662,257)
	$ 52,534,453	$ 51,145,382		$ 1,389,071

(a) Excludes indirect costs not allocated to specific jobs.

CCI CONSTRUCTION COMPANY, INC.

COMPLETED CONTRACTS

YEAR ENDED DECEMBER 31, 1998

		Contract totals			Before January 1, 1998			During the year ended December 31, 1998		
Job number	Contract	Revenues earned	Cost of revenues earned	Gross profit (loss) before indirect costs	Revenues earned	Cost of revenues earned	Gross profit before indirect costs	Revenues earned	Cost of revenues earned	Gross profit (loss) before indirect costs
426	U.E.P.H. Complex	$ 19,272,256	$ 17,479,889	$ 1,792,367	$ 17,763,732	$ 15,878,479	$ 1,885,253	$ 1,508,524	$ 1,601,410	$(92,886)
445	Houtzdale Prison	10,937,202	11,397,234	(460,032)	4,086,420	4,169,371	(82,951)	6,850,782	7,227,863	(377,081)
448	Outlook Creekview	4,800,644	4,655,443	145,201	554,419	521,254	33,165	4,246,225	4,134,189	112,036
449	U.E.P.H. Headquarters	1,456,558	1,521,701	(65,143)	520,139	515,339	4,800	936,419	1,006,362	(69,943)
		$ 36,466,660	$ 35,054,267	$ 1,412,393	$ 22,924,710	$ 21,084,443	$ 1,840,267	$ 13,541,950	$ 13,969,824	$(427,874)

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CCI CONSTRUCTION COMPANY, INC.

CONTRACTS-IN-PROGRESS

DECEMBER 31, 1998

					Inception to December 31, 1998			December 31, 1998		Year ended December 31, 1998		
Job number	Project	Total contract price	Estimated total direct contract costs	Estimated total contract earnings (loss) before indirect costs	Direct contract costs to December 31, 1998	Contract earnings (loss) accrued to December 31, 1998 before indirect costs	Billings to December 31, 1998	Costs and estimated earnings in excess of billings	Billings in excess of costs and estimated earnings	Revenues earned	Direct cost of revenues earned	Gross profit (loss) before indirect costs
439	Mahanoy Prison	$ 11,699,418	$ 10,667,972	$ 1,031,446	$ 10,666,808	$ 1,031,333	$ 10,481,740	$ 1,216,401		$ 5,623,543	$ 4,357,586	$ 1,265,957
450	Johnstown	3,266,600	3,245,082	21,518	1,172,766	7,776	730,724	449,818		1,064,029	1,057,305	6,724
451	Lord Fairfax	7,082,984	7,301,111	(218,127)	6,659,984	(218,127)	6,570,468		$ 128,611	5,998,746	6,248,376	(249,630)
454	Albemarle Prison	14,524,840	12,875,751	1,649,089	4,819,694	617,292	4,719,426	717,560		5,436,986	4,819,694	617,292
455	Perry Point	12,937,341	11,463,840	1,473,501	4,734,492	608,547	3,108,536	2,234,503		5,343,039	4,734,492	608,547
456	Outlook - Hilliard	5,380,745	4,801,310	579,435	2,715,193	327,677	2,732,602	310,268		3,042,870	2,715,193	327,677
457	Camp Hill	1,495,629	1,372,273	123,356	547,295	49,197	617,799		21,307	596,492	547,295	49,197
459	Scott Air Force Base	14,870,150	13,929,350	940,800	6,026,575	407,040	6,571,905		138,290	6,433,615	6,026,575	407,040
460	Germ Plasma Center	15,565,000	14,667,024	897,976	2,905,995	177,917	2,252,156	831,756		3,083,912	2,905,995	177,917
461	Outlook - Chesterfield	3,842,372	3,629,824	212,548	1,518,251	88,902	1,097,444	509,709		1,607,153	1,518,251	88,902
462	Outlook - Westerville	5,589,900	5,218,140	371,760	458,553	32,669	419,511	71,711		491,222	458,553	32,669
		$ 96,254,979	$ 89,171,677	$ 7,083,302	$ 42,225,606	$ 3,130,223	$ 39,302,311	$ 6,341,726	$ 288,208	$ 38,721,607	$ 35,389,315	$ 3,332,292

C 7643

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CCI CONSTRUCTION CO., INC.
BALANCE SHEET
12/31/99

PAGE 1
02-14-2000 14:07

1000	A S S E T S			
1002	*CURRENT ASSETS*			
1040	CASH & INVESTMENTS	(594,857.26)		
1049	TOTAL CASH & INVESTMENTS		(594,857.26)	
1050	ACCOUNTS RECEIVABLE:			
1100	ACCOUNTS RECEIVABLE	12,230,914.30		
1110	A/R RETAINAGE	4,903,477.69		
1140	EMPLOYEE RECEIVABLE	1,973.68		
1141	ACCOUNTS RECEIVABLE-ORTENZIO	184.83		
1156	DUE FROM AFFILIATES	2,197.66		
1157	TOTAL ACCOUNTS RECEIVABLE		17,138,748.16	
1167	INVENTORY:	54,384.97		
1168	INVENTORY		54,384.97	
1192	OTHER CURRENT ASSETS		38,354.36	
1193	COSTS & EARNINGS > BILLINGS		4,158,685.00	
1195	TOTAL CURRENT ASSETS		20,795,315.23	
1196	*LONG TERM ASSETS*			
1200	OFFICER LIFE INSURANCE POLICY		62,094.00	
1205	NOTE RECEIVABLE - VEHICLE		24,621.53	
1300	*FIXED ASSETS*			
1301	OFFICE FURNITURE AND FIXTURES	1,040,346.51		
1302	MACHINERY AND EQUIPMENT	1,181,976.51		
1303	AUTOS AND TRUCKS	1,153,516.12		
1304	SMALL TOOLS	317,193.27		
1305	SHOP/MECHANICAL EQUIPMENT	347,101.45		
1390	TOTAL FIXED ASSETS	4,126,849.39		
1400	ACCUMULATED DEPRECIATION/AMORT:			
1401	ACCUM DEPR - FURNITURE & FIXTURE	(716,766.60)		
1402	ACCUM DEPR - MACH & EQUIP	(396,493.16)		
1403	ACCUM DEPR - AUTO & TRUCK	(341,643.25)		
1404	ACCUM DEPR - SMALL TOOLS	(162,519.74)		
1405	ACCUM DEPR - SHOP/MECHANICAL	(160,079.00)		
1488	TOTAL ACCUM DEPR/AMORT	(1,777,501.75)		
1490	NET FIXED ASSETS		2,349,347.64	
1999	TOTAL A S S E T S			23,144,662.87

EXHIBIT
9
3/13/01 HMH

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2000	L I A B I L I T I E S			
2005	CURRENT LIABILITIES			
2099	ACCOUNTS PAYABLE:			
2100	ACCOUNTS PAYABLE	2,951,006.31		
2101	SUBCONTRACTOR A/P	6,130,086.78		
2102	A/P RETAINAGE	3,764,423.64		

2120	TOTAL ACCOUNTS PAYABLE		12,845,516.73	
2295	ACCRUED PAYROLL TAXES		202,668.00	
2415	OTHER CURRENT LIABILITIES		320,629.67	
2431	NOTE PAYABLE-ALLFIRST LINE OF	1,200,000.00		
2450	NOTES PAYABLE-CURRENT		3,782,351.64	
2480	BILLINGS > COSTS & EARNINGS		4,402,180.00	

2490	TOTAL CURRENT LIABILITIES		22,753,346.04	
2870	NOTES PAYABLE-LONG TERM		1,387,079.70	

2990	TOTAL L I A B I L I T I E S		24,140,425.74	
3000	E Q U I T Y			
3110	CAPITAL SURPLUS	9,797.00		
3200	RETAINED EARNINGS	286,513.75		
3210	RETAINED EARNINGS SUB-S CORP	4,343,092.86		
3275	OTHER ACCUMULATED ADJUSTMENTS	480,647.00		
3300	CURRENT YEAR EARNINGS	(6,115,813.48)		

3800	TOTAL E Q U I T Y		(995,762.87)	

3900	TOTAL LIABILITIES AND EQUITY			23,144,662.87
				===============

1003	CASH:	
1010	CASH - DAUPHIN CHECKING	(573,734.41)
1011	CASH - DAUPHIN PAYROLL	(55,522.85)
1013	CASH - FLEX REIMBURSEMENT ACCT	100.00
1016	INVESTMENT IN EPIC	3,000.00
1017	INVESTMENT IN RAFFLES	31,000.00
1020	PETTY CASH	300.00

1040	CASH & INVESTMENTS	(594,857.26)

1158	INVENTORY:	
1160	SHEET METAL SHOP INVENTORY	54,384.97

1167	INVENTORY:	54,384.97

1150	DUE FROM AFFILIATES	
1153	DUE TO/FROM CUSTODIAL	376.20
1154	DUE TO/FROM RELIANCE	(45.64)
1155	DUE TO/FROM MECH LAND CO	1,867.10
1156	DUE FROM AFFILIATES	2,197.66

C 7738

1169	CURRENT ASSETS:		
1175	PREPAID RENT	2,015.28	
1176	SECURITY DEPOSIT - CALIFORNIA	2,015.28	
1185	PREPAID TAXES	25,100.00	
1190	PREPAID GENERAL EXPENSES	9,223.80	
1192	OTHER CURRENT ASSETS		40,552.02

2190	ACCRUED PAYROLL TAXES:		
2200	ACCRUED FED W/H	57,394.00	
2210	ACCRUED FICA W/H	53,592.89	
2220	ACCRUED FUTA	4,877.66	
2222	ACCRUED SUTA - CAL	196.51	
2223	ACCRUED STATE W/H - CAL	6,607.92	
2225	ACCRUED STATE W/H - PA	2,570.83	
2226	ACCRUED LOCAL W/H - PA	4,817.40	
2227	ACCRUED OPT W/H - PA	1,110.00	
2228	ACCRUED SUTA - PA	21,787.09	
2232	ACCRUED STATE W/H - DEL	36.47	
2241	ACCRUED SUTA - W VA.	4,911.32	
2243	ACCRUED STATE W/H - WEST VA	5,547.10	
2248	ACCRUED SUTA - MD	3,071.83	
2249	ACCRUED STATE W/H - MD	9,728.80	
2250	ACCRUED SUTA - MO	161.13	
2251	ACCRUED STATE W/H - MO	1,341.00	
2256	ACCRUED SUTA - OHIO	520.00	
2258	ACCRUED STATE W/H - OHIO	485.40	
2275	ACCRUED STATE W/H - VA	14,773.69	
2276	ACCRUED SUTA - VA	3,282.40	
2281	ACCRUED STATE W/H - ILLINOIS	3,130.65	
2282	ACCRUED SUTA - IL	2,723.91	
2295	ACCRUED PAYROLL TAXES		202,668.00

C 7740

2296	OTHER CURRENT LIABILITIES		
2301	ACCRUED WORKERS COMP	190,594.18	
2307	ACCRUED CAFETERIA DEDUCTIONS	(40,624.70)	
2310	ACCRUED PAYROLL	130,079.77	
2311	ACCRUED UNION FRINGE PAYABLE	186.85	
2313	ACCRUED FRINGE FUND ACCOUNT	6,079.45	
2315	ACCRUED 401(K) PLAN	2,414.12	
2329	ACCRUED ACCOUNTING FEES	31,900.00	
2415	OTHER CURRENT LIABILITIES		320,629.67

EXHIBIT
Ortenzio-5
2/13/01 TLB

CCI CONSTRUCTION CO., INC

CASH FLOW PROJECTIONS

2/1/00 THRU 3/31/01 (Completion date of last job)

	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	REMAINING	TOTAL
Beginning Cash Balance	(6,205,366)	(9,063,691)	(9,199,345)	(9,389,090)	(9,589,773)	(9,973,228)	(9,873,456)	
Revenue	5,593,391	6,162,630	7,455,167	7,782,395	7,921,756	6,990,371	28,835,033	70,740,743
Direct Costs	(8,202,659)	(6,039,755)	(7,420,683)	(7,769,575)	(8,074,547)	(6,686,415)	(23,339,629)	(67,533,263)
Net Cash from Jobs	(2,609,268)	122,875	34,484	12,820	(152,791)	303,956	5,495,404	3,207,480
Overhead	(229,066)	(238,539)	(204,238)	(193,513)	(210,674)	(183,694)	(1,312,620)	(2,572,344)
Depreciation	50,500	50,500	50,500	50,500	50,500	50,000	350,000	652,500
Principal Payments	(39,798)	(40,027)	(40,259)	(40,491)	(40,725)	(40,960)	(336,311)	(578,571) **
Interest Expense on Equip Loans	(10,693)	(10,463)	(10,232)	(9,999)	(9,765)	(9,530)	(67,611)	(128,293)
Interest Expense on Line of Credit*	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(20,000)	(160,000)	(280,000)
Net Cash Flow with Equipment	(2,858,325)	(135,654)	(189,745)	(200,683)	(383,455)	99,772	3,968,862	300,772
Ending Cash Balance w/ Equip	(9,063,691)	(9,199,345)	(9,389,090)	(9,589,773)	(9,973,228)	(9,873,456)	(5,904,594)	(62,993,174)
Available Line of Credit	5,200,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	4,000,000	
Cash shortage	(3,863,691)	(5,199,345)	(5,389,090)	(5,589,773)	(5,973,228)	(5,873,456)	(1,904,594)	

5,903,000

**Principal pmts are thru 3/31/01. At that time, the remaining principal balance will be $1,259,524.

Also, the overhead, depreciation, and interest expense are projected through 3/31/01. All jobs are projected through the end, which is projected to be 3/31/01.

*Interest expense on the line of credit was projected for $3,000,000 at 8%.

Interest expense on equipment is actual based on amortization schedules. It does not include any decrease for vehicles that will be sold.

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Cash Flow Jan 2000 xls

CCI CONSTRUCTION CO., INC.

REMAINING BILLINGS AND COSTS ON JOBS

JOB #	JOB NAME	C CONTRACT AMOUNT	D AMT PD THRU 1/31/00	E MO OF BILL	F REMAINING TO BE PD	G AMOUNT IN RETENTION	H TOTAL PRO-JECTED COST PER 12/31 CTC	I ACTUAL COSTS THRU 01/31/00	H - I = J REMAINING COSTS	F - J = K DIFFERENCE
454	ALBEMARLE	14,582,917	10,924,799		3,658,118	600,551	15,544,471	13,044,430	2,500,041	1,158,077
448	CREEKVIEW	4,856,021	4,856,021		0	0	4,677,876	4,677,876	0	0
456	HILLIARD	5,600,748	5,318,813		281,935	279,938	5,081,715	5,090,697	-8,982	290,917
461	CHESTERFIELD	4,115,065	3,776,419		338,646	203,326	4,061,553	3,990,886	70,667	267,979
462	WESTERVILLE	5,767,995	3,300,307		2,467,688	394,184	5,679,439	3,976,072	1,703,367	764,321
476	SUMMERDALE	1,942,371	983,147		959,224	296,615	1,867,273	1,868,258	-985	960,209
470	PERRY CTY	4,349,802	3,795,985		553,817	0	4,504,792	4,113,956	390,836	162,981
450	JOHNSTOWN	3,732,569	3,631,674		100,895	99,820	3,705,315	3,707,462	-2,147	103,042
465	JAMES RIVER	7,242,081	3,533,593		3,708,488	222,010	7,434,677	4,010,947	3,423,730	284,758
467	EPW III	4,060,421	3,756,179		304,242	203,371	3,778,939	3,530,088	248,851	55,391
478	EPW 1ST FLOOR	204,290	195,459		8,831	0	194,270	205,308	-11,038	19,869
475	SR22 CAMBRIA	868,337	865,540		2,797	0	874,936	865,339	9,597	-6,800
455	PERRY PT	12,999,654	11,438,742		1,560,912	300,000	12,013,954	11,537,698	476,256	1,084,656
453	PA TURNPIKE	226,834	226,834		0	0	78,704	78,704	0	0
473	KOST ROAD	1,767,688	1,442,347		325,341	0	1,666,842	1,299,936	366,906	-41,565
460	GERMPLASM	16,155,581	9,057,829		7,097,752	998,109	15,922,012	10,265,744	5,656,268	1,441,484
477	COOL & COLD	12,319,099	880,888		11,438,211	0	11,692,515	1,572,220	10,120,295	1,317,916
480	AQUA WATERLINE	191,083	0		191,083	0	165,915	1,982	163,933	27,150
459	SCOTT AFB	15,081,490	14,860,168		221,322	472,580	18,979,483	18,907,941	71,542	149,780
466	VCU	22,072,607	5,925,956		16,146,651	472,816	20,864,978	8,660,944	12,204,034	3,942,617
451	LORD FAIRFAX	7,230,740	6,859,169		371,571	361,008	7,984,882	7,991,224	-6,342	377,913
439	MAHANOY	11,730,187	11,729,437		750	750	10,704,600	10,704,600	0	750
458	PA TURN CONST	22,564,223	1,561,754		21,002,469	111,516	21,139,451	2,779,055	18,360,396	2,642,073
	TOTAL	179,661,803	108,921,060		70,740,743	5,016,594	178,618,592	122,881,367	55,737,225	15,003,518

Cash Flow Revenue Projections by Job by Month

JOB #	JOB NAME	REMAINING REVENUE TO BE PAID	FEBRUARY	MARCH	APRIL	MAY	JUNE	JULY	REMAINING	TOTAL
454	ALBEMARLE	3,658,118	369,000	400,000	600,000	500,000	600,000	300,000	889,118	3,658,118
448	CREEKVIEW	0	0	0	0	0	0	0	0	0
456	HILLIARD	281,935	0	0	0	281,935	0	0	0	281,935
461	CHESTERFIELD	338,646	86,780	0	13,220	35,320	0	203,326	0	338,646
462	WESTERVILLE	2,467,688	247,354	325,000	525,000	525,000	300,000	225,334	320,000	2,467,688
476	SUMMERDALE	959,224	638,911	23,697	0	0	296,616	0	0	959,224
470	PERRY CTY	553,817	0	0	0	0	220,000	220,000	113,817	553,817
450	JOHNSTOWN	100,895	0	0	100,895	0	0	0	0	100,895
465	JAMES RIVER	3,708,488	330,948	451,352	700,000	700,000	450,000	300,000	776,188	3,708,488
467	EPW III	304,242	107,875	196,367	0	0	0	0	0	304,242
478	EPW 1ST FLOOR	8,831	8,831	0	0	0	0	0	0	8,831
475	SR22 CAMBRIA	2,797	2,797	0	0	0	0	0	0	2,797
455	PERRY PT	1,560,912	400,000	400,000	460,912	0	300,000	0	0	1,560,912
453	PA TURNPIKE	0	0	0	0	0	0	0	0	0
473	KOST ROAD	325,341	0	2,370	2,370	2,370	2,370	2,370	313,491	325,341
460	GERMPLASM	7,097,752	850,000	850,000	1,000,000	1,100,000	1,100,000	1,100,000	1,097,752	7,097,752
477	COOL & COLD	11,438,211	900,000	1,630,033	1,100,000	1,400,000	1,300,000	1,200,000	3,908,178	11,438,211
480	AQUA WATERLINE	191,083	0	0	0	0	0	0	191,083	191,083
459	SCOTT AFB	221,322	0	0	0	0	0	0	221,322	221,322
466	VCU	16,146,651	1,167,539	1,200,000	1,500,000	1,600,000	1,900,000	1,800,000	6,979,112	16,146,651
451	LORD FAIRFAX	371,571	0	0	0	185,000	0	186,571	0	371,571
439	MAHANOY	750	750	0	0	0	0	0	0	750
458	PA TURN CONST	21,002,469	482,606	683,811	1,452,770	1,452,770	1,452,770	1,452,770	14,024,972	21,002,469
	TOTAL	70,740,743	5,593,391	6,162,630	7,455,167	7,782,395	7,921,756	6,990,371	28,835,033	70,740,743

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Cash Flow Jan 2000.xls

Cash Flow Cost Projections by Job by Month

JOB #	JOB NAME	REMAINING COSTS	A/P AMT AT 1/31/00	FEBRUARY SUBS	FEBRUARY ALL OTHER	MARCH SUBS	MARCH ALL OTHER	APRIL SUBS	APRIL ALL OTHER	MAY SUBS	MAY ALL OTHER	JUNE SUBS	JUNE ALL OTHER	JULY TOTAL	REMAINING TOTAL	TOTAL	REMAINING COSTS (C-O)
OVERHEAD A/P & CLOSED JOBS		0	368,722	<INC RETNTN	(138,475)	0	0	0	0	0	138,475	0	0	0	0	0	0
454	ALBEMARLE	2,500,041	861,147	(424,313)	0	200,000	200,000	300,000	300,000	250,000	250,000	300,000	300,000	300,000	524,354	2,500,041	0
448	CREEKVIEW	0	27,683	0	0	0	0	0	0	0	0	0	0	0	0	0	0
456	HILLIARD	(8,982)	275,385	(234,012)	0	0	10,000	0	0	0	0	234,012	0	0	0	10,000	(18,982)
461	CHESTERFIELD	70,687	421,655	(209,124)	0	50,000	0	20,687	0	0	0	0	0	209,124	0	70,687	0
482	WESTERVILLE	1,703,387	802,302	(213,861)	90,000	200,000	125,000	325,000	200,000	325,000	200,000	150,000	100,000	88,767	113,281	1,703,387	0
476	SUMMERDALE	(985)	282,177	(32,887)	0	10,000	0	0	0	0	0	0	32,887	0	0	10,000	(10,985)
470	PERRY CTY	390,836	119,943	0	30,000	0	25,000	0	25,000	0	100,000	0	100,000	0	110,836	390,836	0
450	JOHNSTOWN	(2,147)	284,900	(198,800)	0	10,000	0	0	0	198,800	0	0	0	0	0	10,000	(12,147)
485	JAMES RIVER	3,423,730	558,129	(159,872)	20,000	225,000	226,000	450,000	400,000	400,000	350,000	400,000	150,000	400,000	582,602	3,423,730	0
487	EPW III	248,851	582,859	(221,474)	50,000	150,000	48,851	221,474	0	0	0	0	0	0	0	248,851	0
478	EPW 1ST FLOOR	(11,038)	6,568	(6,551)	0	16,551	0	0	0	0	0	0	0	0	0	10,000	(21,038)
475	SR22 CAMBRIA	9,597	1,431	0	5,000	0	4,597	0	0	0	0	0	0	0	0	9,597	0
455	PERRY PT	478,256	878,933	(650,648)	0	278,256	0	200,000	0	0	0	650,648	0	0	0	478,256	0
453	PA TURNPIKE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
473	KOST ROAD	366,906	67,686	(43,501)	0	2,500	0	2,000	0	2,500	0	2,000	0	2,500	398,907	366,906	0
460	GERMPLASM	5,658,268	1,035,749	(413,063)	50,000	450,000	400,000	500,000	500,000	600,000	500,000	500,000	600,000	1,100,000	869,331	5,656,268	0
477	COOL & COLD	10,120,295	359,318	(69,951)	100,000	1,300,000	300,000	900,000	200,000	1,200,000	200,000	1,100,000	150,000	1,150,000	3,590,248	10,120,295	0
480	AQUA WATERLINE	163,933	1,974	0	0	0	0	0	0	0	0	0	0	75,000	88,933	183,933	0
459	SCOTT AFB	71,542	344,863	(105,063)	0	25,000	35,000	0	11,542	0	0	0	0	0	106,063	71,542	0
468	VCU	12,204,034	2,910,498	(445,741)	75,000	1,000,000	100,000	1,325,000	100,000	1,400,000	100,000	1,600,000	65,000	1,800,000	4,884,775	12,204,034	0
451	LORD FAIRFAX	(8,342)	210,539	(236,024)	10,000	0	0	0	0	115,000	0	0	0	121,024	0	10,000	(18,347)
439	MAHANOY	0	86,694	0	0	0	0	0	0	0	0	0	0	0	0	0	0
458	PA TURN CONSTR	18,360,396	1,189,570	(160,905)	20,000	825,000	25,000	1,400,000	40,000	1,400,000	40,000	1,400,000	40,000	1,440,000	12,091,301	18,360,396	0
	TOTAL	55,737,225	11,716,544	(3,825,410)	311,525	4,540,307	1,499,448	5,644,141	1,776,542	5,891,100	1,878,475	6,536,660	1,537,667	6,686,415	23,339,629	55,816,719	(79,494)

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CCI CONSTRUCTION CO., INC.
GROSS PROFIT COMPARISONS
DECEMBER 1999

JOB NUMBER	DESCRIPTION	DECEMBER CONTRACT AMOUNT	ORIGINAL PROJECTED GP AMOUNT	DECEMBER 98 PROJECTED GP AMOUNT	DECEMBER 98 GROSS PROFIT %	AUGUST PROJECTED GP AMOUNT	AUGUST GROSS PROFIT %	SEPTEMBER PROJECTED GP AMOUNT	SEPTEMBER GROSS PROFIT %	OCTOBER PROJECTED GP AMOUNT	OCTOBER GROSS PROFIT %	NOVEMBER PROJECTED GP AMOUNT	NOVEMBER GROSS PROFIT %	DECEMBER PROJECTED GP AMOUNT	DECEMBER GROSS PROFIT %
45400	ALBEMARLE	14,582,917	1,600,000	1,649,089	11.35%	448,758	3.06%	170,846	1.16%	64,597	0.44%	(309,776)	-2%	(981,554)	-7%
48,000	AQUA WATER LINES	191,083	25,168			N/A	N/A	N/A	N/A	25,168	13.17%	25,168	13%	25,168	13%
45700	CCI-CAMP HILL	12,319,099	0	123,356	8.25%	42,111	2.82%	45,837	3.06%	50,190	3.36%	50,181	3%	49,364	5%
47700	COOL & COLD AQUA	204,290	649,194			461,783	3.79%	571,997	4.69%	571,997	4.69%	571,997	5%	628,584	5%
47800	EPW I	4,060,421	26,901			26,901	12.70%	10,631	5.43%	12,362	6.05%	11,004	5%	10,020	5%
46700	EPW III	16,155,581	185,897	N/A	N/A	276,882	7.40%	276,881	6.93%	304,259	7.60%	303,027	8%	281,487	1%
46000	GERMPLASM	7,242,081	930,000	897,976	5.77%	652,429	4.17%	563,358	3.60%	478,482	2.98%	435,227	3%	233,569	-3%
44500	HOUTZDALE	0	200,000	(460,032)	-4.21%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
46500	JAMES RIVER	3,732,569	150,000	N/A	N/A	33,688	0.47%	3,306	0.05%	(21,208)	-0.29%	(196,342)	-3%	(192,596)	1%
45000	JOHNSTOWN	7,230,740	100,000	21,518	0.66%	81,837	2.19%	80,763	2.16%	63,352	1.70%	40,185	1%	27,254	10%
45100	LORD FAIRFAX	4,115,065	250,000	(218,127)	-3.09%	(354,698)	-4.81%	(421,002)	-5.68%	(463,230)	-6.23%	(501,608)	-7%	(754,142)	1%
43900	MAHANOY PRISO	5,600,748	150,640	1,068,986	9.11%	1,065,027	9.08%	1,027,063	8.76%	1,027,044	8.76%	1,070,486	9%	1,025,587	9%
46100	OUTLOOK-Chesterfield	5,767,995	256,000	212,548	5.53%	183,044	4.63%	184,031	4.70%	225,484	5.52%	222,105	5%	53,512	2%
44800	OUTLOOK-Creekview	22,564,223	133,712	145,201	3.02%	158,731	3.27%	178,939	3.68%	174,501	3.59%	177,609	4%	178,145	6%
45600	OUTLOOK-Hillard	1,767,688	350,000	579,435	10.77%	593,906	10.68%	577,325	10.31%	542,475	9.69%	521,422	9%	519,033	6%
46200	OUTLOOK-Westerville	12,999,654	350,000	371,760	6.65%	331,329	5.93%	348,725	6.24%	348,679	6.09%	348,679	6%	88,556	8%
45800	PA TURNPIKE	4,349,802	1,480,000	N/A	N/A	1,480,000	7.40%	1,425,261	6.30%	1,424,832	6.31%	1,424,832	6%	1,424,772	-4%
47300	PA TURNPIKE - KOST	868,337	100,000	N/A	N/A	103,875	5.88%	103,803	5.87%	100,847	5.71%	100,847	6%	100,846	-1%
45500	PERRY POINT	19,772,015	766,180	1,473,501	11.39%	1,515,700	11.41%	1,509,715	11.35%	1,464,661	11.01%	1,444,338	11%	985,700	4%
47000	SR II PERRY CNTY	1,942,371	536,973	N/A	N/A	577,966	14.01%	577,966	14.01%	577,967	14.01%	498,443	12%	(154,990)	4%
47500	SR 22 CAMBRIA CNTY	22,072,607	121,640			57,038	6.83%	36,659	4.39%	158,958	17.81%	124,580	14%	(6,600)	5%
45900	SCOTT A F BASE	19,772,015	821,897	940,800	6.33%	897,402	4.84%	897,402	4.76%	832,108	4.36%	919,994	5%	792,532	0%
47600	SUMMERDALE	0	152,147			213,782	12.66%	213,782	12.66%	213,782	12.66%	236,882	13%	75,098	0%
42600	U.E.P.H.	0	1,640,000	1,792,367	9.30%	1,692,341	8.78%	1,680,215	8.72%	1,679,983	8.72%	1,679,955	9%	1,679,144	0%
44900	UEPH CO HQTRS	1,456,558	83,260	(65,143)	-4.47%	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
46600	VCU LIFE SCIENCE	0	1,288,815	N/A	N/A	1,215,405	5.55%	1,210,146	5.52%	1,213,101	5.53%	1,203,310	5%	1,207,629	0%
		188,767,859		8,533,235		11,755,237		11,273,647		11,070,370		10,402,546		7,314,112	

DISTRIBUTION
Shane Miller
Doug McAninch
John Ortenzio
Sheri Phillips

I

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WRITER'S DIRECT DIAL NUMBER:

(410) 385-5100
Writer's E-Mail Address:
lgebh@gebsmith.com

Refer To File No. 18610

February 24, 2000

Via Facsimile and Federal Express
4027 1282 2404

CCI CONSTRUCTION CO., INC.
2500 Old Gettysburg Road
Camp Hill, Pennsylvania 17011-7307

Attn: John M. Ortenzio, President

RE: $4,000,000 Unsecured Revolving Line Of Credit and
$2,000,000 Secured Equipment Purchase Line of Credit
Extended By Allfirst Bank To CCI Construction Co., Inc.

Dear Mr. Ortenzio:

This firm represents Allfirst Bank ("Lender"), which has extended to CCI Construction Co., Inc. ("Borrower") (a) a revolving line of credit in the maximum principal amount of $4,000,000 pursuant to a FILM/Cash Solutions Promissory Note dated March 24, 1999 ("Film Note") and related documents, and (b) a secured equipment purchase line of credit in the stated principal amount of $2,000,000 pursuant to a Commercial Loan Note ("Commercial Note") and a Security Agreement, both dated November 20, 1998, and related documents. This letter is being sent at the specific request and direction of the Lender.

As a result of the occurrence of various events which are materially adverse to the financial condition of the Borrower, and as a further result of the insolvency of the Borrower, the Lender hereby declares a default under the Commercial Loan Note and under the Security Agreement. In consequence of this declaration of default under the equipment purchase line of credit, the Lender hereby accelerates and declares immediately due and payable all sums presently outstanding and owing under the equipment purchase line of credit.

As a result of the default under the equipment line of credit, the Borrower is, in turn, in default under the cross-default provisions of Section 11 of the FILM Promissory Note, and the Lender hereby declares the default. In consequence of this default the Bank hereby accelerates and demands immediate payment of all sums presently due and owing under the FILM Promissory Note.

Because of the default under the FILM Promissory Note and the Bank's acceleration and demand for immediate payment of the sums due thereunder no further sums will be advanced under the revolving line of credit evidenced by the FILM/Cash Solutions Promissory Note, **effective immediately**. Any checks or other payments items in transit will not be honored by the Lender.

GEBHARDT & SMITH

The total sums presently due and outstanding under the equipment purchase line of credit and the revolving line of credit, respectively, are as follows:

Equipment Purchase Line Of Credit	
Principal	$1,244,116.74
Interest through February 23 2000	$ 5,237.80
Total	$ 1,249,354.54
Interest per day thereafter: $231.54	
Revolving Line Of Credit	
Principal	$2,601,514.01
Interest through February 23, 2000	$ 26,524.83
Total	$2,628,038.84
Interest per day thereafter: $596.18	

As previously stated, the Lender by this letter is demanding immediate payment in full of all sums due and owing to it by the Borrower under both loans. Unless full payment is made by the Borrower immediately upon receipt of this letter, all remedies available to the Lender under applicable law will be pursued without further notice to the Borrower, including the institution of judgment by confession and the enforcement of the Lender's security interest.

This letter is not intended to be a waiver of any rights, remedies, or recourse available to the Lender, nor an election of remedies arising as a result of the defaults or of any other default which may now or hereafter exist with respect to the revolving line of credit and the equipment line of credit. The collection of interest or acceptance of partial payments (that is, less than the total amount due in accordance with the terms of the debt instruments) by the Lender shall not constitute an extension of the maturity date of the revolving line of credit or equipment line of credit or a waiver of the Lender's acceleration of the indebtedness evidenced by the respective debt instruments or of any other rights under the loan documents.

Very truly yours,

Lawrence J. Gebhardt

LJG/dls

cc: Gerard L. Elias, SVP
- ALLFIRST BANK
Robert E. Chernicoff, Esquire
- CUNNINGHAM & CHERNICOFF, P.C.

obtaining the $4 million line of credit?

A He did not actually meet with the bank. I met with the bank. He was aware what was going on and talked to me about what I was doing, what my plans were, what the amount of the loan was. So I had spoken to him about that outside of the meeting with the bank. But when I actually sat down with the bank, he was not in those meetings as I recall.

Q What was the purpose to your understanding as the CFO of the $4 million line of credit?

A To cover the work in progress and cover our cash flow needs as the receivables were coming in.

MR. GEBHARDT: Will you mark this as the first deposition exhibit?

(3/23/1999 letter was marked as Deposition Exhibit No. 1.)

BY MR. GEBHARDT:

Q I've handed you what has been marked as Deposition Exhibit 1, which purports to be a letter dated March 23rd, 1999, to you from Craig Schwartz on the letterhead of the First National Bank of Maryland, which is the predecessor name for Allfirst Bank. Do you recognize your -- is that your signature on the last page?

A Yes, it is.

coming in from receivables and projects would generate enough cash to pay this down on a short-term basis.

Q In the discussions, was it discussed that CCI would repay the $1.2 million loan by making a borrowing on the $4 million line of credit?

A No, it was not.

Q I note on Exhibit 4 that again there's the reference to the $4 million Scott Air Force Base receivable. Did that $4 million receivable have any relationship to a source of funds to repay the $1.2 million loan?

A I don't recall if that -- if that was specifically said or not.

Q Now, at the time the $1.2 million loan was being taken out, I take it you had discussions with Mr. Ortenzio about the borrowing?

A That's correct.

Q And did you and Mr. Ortenzio discuss where CCI would obtain the funds to repay the $1.2 million when it came due which, according to the commitment letter, was March 31, 2000?

A Yes, we did.

Q And what was the substance of those discussions?

A I had done some cash flow projections. I know John was adamant about having this paid back on a short-term basis. When I gave him the cash flow projections, I had said that if the job profits that are projected hold, we would have the money to pay back this 1.2 million.

I also told him that we had seen declining job profit projections over time. I said, I'm not making the projections on the jobs. That's what I've been given from the people in operations. Each month they were decreasing.

I said, based on what the most current projections were, if they came in at that amount, we would have the cash flow to pay back the 1.2 million.

Q At the time you were having these discussions with Mr. Ortenzio, were there any discussions about using a borrowing under the $4 million line of credit to repay the $1.2 million guaranteed note?

A No, there were not.

Q In 1999 and the year 2000, did Mr. Ortenzio, to your knowledge, have any involvement in the repaying of the loans to Allfirst Bank?

A Which loans?

Q Well, there were three loans. You had the

line of credit -- let's start first with the $4 million line of credit. Did he get involved in how that was being paid or repaid at all?

A I'm not sure.

MS. JOYCE: What time?

MR. GEBHARDT: In 1999 and 2000.

THE WITNESS: Did he get involved in how it was repaid?

BY MR. GEBHARDT:

Q Or the process, the repayment process?

A No, that was the line of credit. As the cash came in, it was paid down.

Q How about the repayment of the equipment loan?

A No, he did not.

Q Okay. Now, the $1.2 million loan was repaid by CCI on or about February 11, 2000, by the delivery of a check by Mr. Ortenzio personally to Allfirst.

Prior to that date, had you had any discussions with Mr. Ortenzio about the repayment of the $1.2 million line of credit?

A Yes. He had come to me about that.

Q And what was the substance of the discussions you had?

A He wanted to pay down the $1.2 million -- the $1.2 million line, he wanted to pay down because he had that personally guaranteed. He had asked me about writing a check out to pay that off from the line of credit, and I refused.

Q Why did you refuse?

A I didn't think it was in the best interest of the corporation to do that.

Q And could you explain why you had those -- that you didn't think it was in the best interest of the corporation?

A One, I guess I didn't think there was any benefit to doing it. The interest rates were the same in the loans so there was no corporate benefit from paying one -- drawing in one line of credit to pay the other.

Two, if we had the extra cash, I would have thought it best suited to pay payroll and accounts payable and subcontractors.

Q And at the time the loan was paid in February, the company was experiencing cash flow difficulties?

A Yes.

Q And did you understand that repaying the $1.2 million loan with a draw on the $4 million line

of credit would reduce the amount of available cash to the company?

A Yes, definitely.

Q Okay. Now, in terms of the physical paying of the $1.2 million loan, you did not write the check?

A No, I did not.

Q Did you have signature authorities over the checking account?

A Yes, I did.

Q And so if you had wanted to, you could have written a $1.2 million check and sent it in to Allfirst?

A Yes, I could have.

Q Did Mr. Ortenzio have any reaction to your refusal to write the check or make that payment?

A Initially when he had asked me about it and I said no, he didn't do anything. Then at a later point in time, he came back to me again and said I know you don't agree with this; but I need to do it. I said, you're the president of the company; but I'm not going to be any part of it.

Q Did he at all elaborate on when he said I need to do this, what he was meaning by this?

A He personally guaranteed the 1.2 million

and he wanted that paid off because he had had his personal guarantee.

Q Did you believe using the $4 million line of credit to repay the $1.2 million guaranteed loan was consistent with the agreement that CCI and Allfirst had entered into when Allfirst gave the $4 million line of credit?

MR. SWICHAR: I object to the form of the question. She's not an attorney. You're asking her to interpret legal documents which is the province of the judge and not Ms. Phillips.

MS. JOYCE: Let me hear the question back.

(The reporter read back the referred-to portion of the record.)

MR. SWICHAR: Let me renew my objection. Consistent with the agreement it would require an interpretation of the loan documents which is not the proper function of Ms. Phillips. You may answer the question.

BY MR. GEBHARDT:

Q You may answer the question.

A As chief financial officer and what I knew of the loan documents, no, I did not think it was.

Q And would you explain why that was your thought?

A Because I looked at the line of credit as being a way for us to pay for our ongoing work in progress and to pay our vendors and subcontractors. And as far as I have recalled in prior notes, there were certain things I thought we weren't allowed to do. I know that it was in this one; but going to another bank and getting additional loans, I thought there were restrictions in there that prevented it.

MR. GEBHARDT: Let's mark this as the next exhibit and also the next.

(Income statement was marked as Deposition Exhibit No. 8.)

(Balance sheet was marked as Deposition Exhibit No. 9.)

BY MR. GEBHARDT:

Q I've handed you what's been marked as Deposition Exhibits 8 and 9, which appear to be internally-generated financial statements for CCI Construction for a 13-month period beginning in 1999, January 1, I guess, Exhibit 8 being an income statement and Exhibit 9 being the balance sheet.

Do you recognize these as internally-generated financial statements?

A Yes, I do.

Q And you would have been involved at this

time in the generation of these financial statements --

MS. JOYCE: Object to the form of the question. You may answer.

BY MR. GEBHARDT:

Q -- as supervisor of the accounting department?

A Yes, I would have.

Q And would I be correct that after these were generated, they were provided to Mr. Ortenzio?

A Yes.

Q And at the top of the page in the right-hand corner, there's an indication 02-14-2000 14:05, is that a reference to when these statements were printed out?

A Yes, it is.

Q Roughly how long after they were printed out would it have been when you gave these to Mr. Ortenzio?

A Probably within -- if he was in the office and we did these, it would have been within a day or two.

Q Now, the income statement, if you look at the second page, would I be correct indicates --

MS. JOYCE: The second page of which

exhibit?

MR. GEBHARDT: Of Exhibit 8.

BY MR. GEBHARDT:

Q -- that there is a net loss the company has sustained of slightly over $6 million?

A That's correct.

Q And did you have occasion to discuss with Mr. Ortenzio that amount of loss of the company for the 13-month period after these statements were generated?

A Yes.

Q Would I be correct that there was a 12-month internal income statement also generated at CCI? Would that have been the normal practice?

A That's the normal practice, but this actually would have been the 12-month statement -- you mean because of the 13 months up there?

Q Yes.

A Thirteen months was how our accounting system would give us time at the end of the year to go into the next year so that you could do W-2s in the prior year and keep it open for adjustments and start your next year of business. So this was actually for 12 months.

MS. JOYCE: Let me just make sure the

record is clear. The witness is referencing Exhibit No. 8.

MR. GEBHARDT: Thank you.

BY MR. GEBHARDT:

Q Prior to this document, which is Exhibit 8, being generated, was it understood by you that CCI for the fiscal year 1999 was going to sustain an operating loss in the magnitude that's reflected on the statement?

A Could you repeat that?

Q Right. I mean before February 14 when this statement was printed out, did you have an appreciation that the company was likely to sustain a loss in the $6 million area for the fiscal year 1999?

A Sometime prior to printing this, yes.

Q And based on your discussions with Mr. Ortenzio and things he said to you, did he have an understanding that the company was going to sustain a loss for fiscal year 1999 in this area?

A Prior to this?

Q Yes.

A Prior to this, he would have -- if I can back up. What generates the profits on the jobs are reports that -- I'm sorry. What generates the profit or loss on the income statement is information I got

from operations projecting job profits or losses. At the time those losses came in, they changed drastically because they deceased.

At that time, I had constant conversations with our chief operating officer. He would meet with John, and I would meet with him sometimes together, sometimes apart. This is the final result.

As we discussed that, we knew that it was going to hit our bottom line in a big way as far as an exact amount. We knew it was coming together for a big loss.

Q And focusing on the February 11, 2000 date on which Mr. Ortenzio delivered the CCI check to Allfirst to pay the $1.2 million loan, prior to that date and based on your discussions and interactions with Mr. Ortenzio, was he aware of the company's financial situation that was going to result in a loss somewhere in the magnitude reflected on Exhibit 8?

A Oh, yes.

Q And based on your discussions with him, did his awareness of that -- did he express any relationship between anticipating this loss and wanting to get the $1.2 million loan paid?

MS. JOYCE: You mean prior to February 11?

Are you still in the same time frame?

MR. GEBHARDT: Yes.

THE WITNESS: Give me the question again.

BY MR. GEBHARDT:

Q Did Mr. Ortenzio in any way relate the anticipated loss in the rough area of $6 million to getting the $1.2 million loan repaid even if he had to borrow on the line of credit?

A Yes.

Q Do you remember anything he may have said to you in that regard?

A When we had these discussions, the chief operating officer was Shane Miller; the president, John; myself -- and I don't recall if the senior VP was involved. I think it was probably just the three of us.

Initially, when he talked about the financial condition of the company, the chief operating officer had said that in order to keep going that the company would need more cash put into it.

At that time, John had said he was not going to put more cash into the company. That's when in the meetings, Shane, our chief operating officer, said, if you're not going to, we have serious

impression to us that he was not going to continue with company.

Q Now, Mr. Ortenzio attended that meeting with an attorney named Chernicoff. Do you know how Mr. Ortenzio came in contact with Mr. Chernicoff?

A As I recall, he had told me that initially he had talked to Leroy Zimmerman about being his counsel. I thought there was a conflict of interest. I wasn't involved in the conversations, but there was a conflict of interest and that he was going to use a bankruptcy attorney named Bob Chernicoff. I didn't know him.

Q Did Mr. Ortenzio express to you that Mr. Chernicoff was a bankruptcy attorney?

A I don't recall where I learned he was a bankruptcy attorney. We had the discussion of bankruptcy, and he hired Chernicoff. Whether he told me he was a bankruptcy attorney, I don't know.

Q So you and Mr. Ortenzio had had discussions regarding CCI's possible bankruptcy before the February 18, 2000 meeting at Allfirst?

A Yes.

MS. JOYCE: Object to the form of the question. That's fine.

MR. GEBHARDT: Let's mark this as the next

cash flow shortages that are shown on Deposition Exhibit No. 10?

A Yes, we did.

Q What was the substance of those discussions?

A That -- which time frame are you looking?

Q Well, in other words, the cash flow statement that's Exhibit 10 was generated in showing these cash flow losses that are, at least in my view, fairly significant.

Before he went to Allfirst, did you and he discuss how the company was going to try and come up with the money to meet the cash flow shortages?

A Yes. We had several meetings with myself, the chief operating officer, Shane Miller, and John.

Q Did you have any specific meetings with the anticipation of the February 18 meeting at Allfirst to discuss it?

A We met to -- this was more of an ongoing discussion. But when we got to -- I guess that's what prompted the meeting on February 18th, the fact that we had these serious cash flow concerns. We had talked to John, and Shane said the only way -- we're going to need you to put more money into the company in some form in order to get through this until we

get money back on these claims.

John refused to do that; and Shane said, if we can't do that, we can't keep going forward. The bonding company will have to step in, or we're going to file bankruptcy or something.

We had several meetings discussing that, and the likelihood of the company going forward was slim at that point because John had said he was not making any additional commitments.

At some point in time, we had found out that the Scott Air Force Base was not going to come in real quickly. We needed something at that point in time. We discussed the longevity of the company and the fact that we weren't going forward. That's what prompted the discussions with Allfirst.

Q Did you know that this document, which is Exhibit 10, was going to be distributed at the meeting at Allfirst before the meeting?

MR. SWICHAR: I object because I think she said she didn't recall the specific document.

BY MR. GEBHARDT:

Q Is that correct? You don't recall the specific document?

MS. JOYCE: I don't think that was her testimony. You can clarify your response.

a second?

MR. GEBHARDT: Sure.

(Off the record discussion.)

BY MR. GEBHARDT:

Q Looking at the bottom left-hand corner where it says 2/16/00 and then 7:08 p.m., would that be the time this was printed off the computer?

A Yes.

Q Looking up to the February column, are the numbers there as of February 1 or would they be as of February 28?

A As I recall, the beginning cash balance, I think, was February 1; and the ending cash balance would have been February 28 in the first column. And then that carries forward to March, so that would be the beginning of March at the top of the column and the end of March at the bottom.

Q Where it says the next line after ending cash balance, available line of credit $5,200,000, would that also be a number reflected as of February 28?

A Yes. As far as I recall, that was what my projection was.

Q The cash flow projection doesn't reflect the repayment of the $1.2 million loan with a draw on

the $4 million line of credit?

A No, it didn't.

Q And based on your understanding of how the numbers work on this Deposition Exhibit 10, is there any way Allfirst could have learned by looking at this document that Mr. Ortenzio had caused CCI to borrow on the $4 million line of credit to repay the $1.2 million guaranteed loan?

A No.

MR. GEBHARDT: I have no further questions.

MR. SWICHAR: Could we either take a 15-minute break now or break for lunch. I'll have about an hour's worth.

MS. JOYCE: It's the witness's call.

THE WITNESS: If we could take about a 10- or 15-minute break now, then I could get back to work.

MR. SWICHAR: Okay. Let's take 15 minutes. Thanks.

CROSS EXAMINATION

BY MR. SWICHAR:

Q Ms. Phillips, I sort of want to trace some of the questions that you were previously asked

A Well, this one says work in progress, where I think the other one says work in process. So to the extent that would be the difference, I guess.
Q You don't recognize that as a material difference in what the meaning is, do you?
MR. BURKE: I'll object to the form to the extent the document speaks for itself.
A Work in progress, work in process, I don't know.
MR. BURKE: It's not identical.
A It's not identical.
BY MR. GEBHARDT:
Q The purpose of the million two was to provide funds to finance work in progress and accounts receivable. Correct?
A The intent was a short-term loan, a bridge loan to cover that time period from November to February.
Q Because there was a cash flow shortfall?
A We were projecting a cash flow shortfall.

Q Caused by the receivables that you thought were due and payable particularly from the two projects, Scott Air Force Base and Albemarle Prison. Right?
A Those were two of the reasons as well as the fact that winter had set in, so receivables of all jobs were going to be slower because work couldn't progress. So we were projecting a cash flow shortfall. Whether or not in reality we would have had one, I don't know, but it was close enough where I felt it prudent to obtain additional funds to have in the event that the worst case scenario we were projecting came to pass.
Q How long was this -- was your intention to have the loan outstanding, this temporary facility?
A Our projections, we only needed it for 90 days.
Q Sufficient cash would come into the company to pay it?
A Those were what the projections were, indicating that the cash flow would increase after that.

Q And so this cash increase would be used to repay the temporary facility?
A Well, our cash flow was projected to then increase within about 90 days, and as I indicated to the bank, that was the only amount of time that we needed and that we would pay it back.
Q And the commitment letter provides that it's to be repaid on March 31, 2000. Right?
MR. BURKE: Objection to the form. Where are you referencing, counsel?
MR. GEBHARDT: Next to last paragraph on the first page.
MR. BURKE: Where does it say it will be repaid on March 31?
MR. GEBHARDT: If no demand is made, the loan will expire and all borrowings will be due and payable together with interest on March 31, 2000.
A Well, when I requested a million dollars for 9O days, what they came back with was they wanted to increase the amount, what they had given me as cushion and they wanted to increase the time frame, which I had requested, from 90 to

120. So that is what they came back to. I reiterated to them that that was not necessary and was not what I requested. When I signed the note, he indicated he would have to go back and retype the note, or something to that effect, and really sat there and said, what's the difference, in 90 days pay it.
BY MR. GEBHARDT:
Q The note doesn't have a due date, does it?
MR. BURKE: Objection to form.
A I would have to take a look at it.
MR. BURKE: The document speaks for itself.
BY MR. GEBHARDT:
Q Let's take a look at your note.
MR. GEBHARDT: Mark this as 16.
\- - -
(Whereupon the document was marked for identification as Deposition Exhibit No. 16.)
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BY MR. GEBHARDT:

A Well, it was deposited into our account.
Q Which was the account tied in with the line of credit?
A Accounts tied in with cash management system. The only account we had, so that was the account it went into.
Q Now, this particular $1.2 million loan was personally guaranteed by you. Isn't that right?
A Yes, it was.
Q And would it be fair to say that the AllFirst representatives expressed to you that they would not give CCI the additional loan without your personal guarantee?
A Yes, that's true.
Q And in connection with that requirement, you actually executed the suretyship agreement that is Deposition Exhibit 16. Isn't that right?
A Yes, I did.

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(Whereupon the document was marked for identification as Deposition Exhibit

No. 18.)

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BY MR. GEBHARDT:
Q Exhibit 18 appears to be a personal financial statement for you that was prepared by CCI's accountants Brown, Schultz, Sheridan & Fritz. Do you recognize it as such?
A Appears to be.
Q And this is a statement of your assets and liabilities as of December 31, 1998. Right?
A Yes.
Q This was required by AllFirst before they would agree it to extend the additional $1.2 million loan?
A I don't know if they got this before the loan or after, to tell you the truth. What's the date, the 9th, so I think they got this after.
Q And at the time this financial statement was submitted, was this an accurate recitation of your assets and liabilities?
A To the best of my knowledge.
Q Based on what I see on the last

page, which is the recitation of assets and liabilities, you had a financial wherewithal to repay personally without the use of CCI funds, the $1.2 million that had been borrowed?
A I would say probably December 31 of '98, it appears that I had enough cash on hand. Whether or not I would have been able to liquidate or had the cash to pay, I had the assets.
Q So you would agree that at least as of December 31, 1998, you had available the cash to have repaid the $1.2 million loan and probably at least as of the year 2000, you had assets or resources sufficient to enable you, had you chosen, to personally repay the $1.2 million loan?
A Well, I don't know exactly -- I would have to see what it was at the end of 1999. But looking at 1998, I had the wherewithal to pay it back.
Q Prior to this financial statement that is Exhibit 18, had you ever provided the bank with a personal financial statement previously?
A I'm sure that I had at some point in time.

Q You can't remember when?
A Well it was probably when the original relationship began, and if there had been any personal guarantee of anything, I would have had -- most likely would have had to give them a personal financial statement.
Q This $1.2 million loan was also secured by some equipment?
A It was secured by, what the document says, specific equipment financed including titled vehicles.

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(Whereupon the document was marked for identification as Deposition Exhibit No. 19.)

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BY MR. GEBHARDT:
Q Do you recognize Exhibit 19 as the security agreement pledging the equipment references in the commitment letter?
A It refers to the collateral, but there's nothing attached, so I don't know specifically what equipment.
Q There's no collateral description

A I don't remember seeing anything from the bank.
Q Where did you expect the funds to come from to repay AllFirst in the 90 days that you anticipated the $1.2 million loan to be outstanding at the end of that time?
A Accounts receivable.
Q Collections from the normal course of business?
A Yes, or from the sale of equipment or whatever was occurring in that 90 days that would have put money into our account.
Q Did you anticipate the $4 million line of credit to have been paid to a zero balance at that time?
A At what time?
Q At the time the money came in to pay the million two.
A I don't believe there was any contemplation -- in other words, it would be a zero balance?
Q Right.
A Or, in other words -- no, I think the understanding from the bank was that that was

a revolving line and that would function as it always had, fluctuate up and down. In fact, I made it clear at the signing of the note that that $1.2 million note would be paid prior to any time frame, whether it be a renewal.
Q The $4 million line of credit commitment letter carried through April 30th and the one million two carried through March 31, so there was a disparity in dates, but did you have any discussions of whether the line of credit would or would not be brought to a zero balance before the million two was repaid or not?
A There was no specific requirement the bank placed on me.
Q I didn't ask you that. I asked you whether you had discussions with anyone from the bank on that topic.
A You need to be more specific, I guess. Just general discussions?
Q Yes. In the course of getting the million two, when you were discussing that, did you have any discussions about whether at the time you repaid the million two, you should have a zero balance on the $4 million revolving line of

credit?
A No.
Q Just not discussed?
A The only discussed part was, as I indicated, was the discussion that they understood that would be paid off within 90 days and that was going to be ahead of any payments on the $4 million line.
Q So, hypothetically, if the $4 million line had a $2 million outstanding balance and a customer sent in a $1.2 million of accounts or payables on CCI's billings, you expected to use the $1.2 million coming in from the customer to pay off the million two loan and just leave the million dollar balance where it was?
MR. BURKE: Could you repeat that question?
BY MR. GEBHARDT:
Q Let me rephrase it.
Hypothetically, would it have been your understanding if we assume the $2 million outstanding on the line of credit and $1.2 million had come into CCI from a customer, that you could use that $1.2 million to pay off the

$1.2 million loan, without first reducing the $1.2 million loan, without first reducing the $2 million hypothetically outstanding under the line of credit?
MR. BURKE: Objection to form.
A If I chose to, sure. I believe that was my understanding and I believe that was the understanding that the bank had.
BY MR. GEBHARDT:
Q On February 11, 2000, the $1.2 million loan was repaid. Correct?
A Yes.
Q Who made the decision to make that payment to the bank on February 11, 2000?
A I did.
Q Did you consult with anyone else in the company about making that payment at that time?
A As I recall, there were discussions that I had reviewing the cash flow situation, where things were on the projects, with the company, and at the end of the discussion or those meetings or review or whatever, I decided that it would be best to pay that note off.

Q You made the decision yourself?
A Yes.
Q And did you tell anyone else in the company prior to making the payment that that's what you were going to do?
A I think I believe I informed the chief operating officer and obviously I informed the chief financial officer.
Q You didn't ask their opinion, whether it was in the best interest of the company to pay the million two loan off at that time?
A Well, I did not ask the opinion of Ms. Phillips. In conversations that day, the day before, I think I made the statement that it seemed to be in our best interest and consistent with what I had stated to the bank that I would do, and basically made the decision, made the decision to pay that note back or pay the note off or however you want to do it.
Q Who got the check written to make the payment?
A What do you mean, got the check written?
Q Did you handwrite the check?

A No. I called Ms. Phillips and told her to prepare a check.
Q This was signed by the machine's signature, the check?
A No. It was a hand check. I signed it.
Q So someone, either Ms. Phillips or someone under Ms. Phillips' direction, wrote out the check by hand and you signed it?
A No, just computer-generated and called the accounts payable clerk. She would basically go into the computer, make out the check, hit the button and the check would be generated.
Q The check writer wasn't used?
A We only used the check writer because it was -- just when we had a long series of checks to write and this was a series of checks that day.
Q Making interest payments monthly to the bank, though, you didn't hand-sign those checks, did you?
A Well, because those were probably regular, they would have been set up and printed

with a series of checks.
Q Was the check writer used?
A I take that back. I think the way the bank did it is they automatically debited our account for interest. I would have to check the bank records or their procedure as to how they did it, but my understanding is that's how they handled the interest.
Q Now, what was the procedure, what was your involvement in the delivery of the check to AllFirst?
A I took it to Mr. Schwartz to -- at his office.
Q You personally?
A Yes.
Q Why did you personally take the check?
A Because I wanted to talk with him, and it presented a very good opportunity for me to have a discussion with him.
Q What did you want to discuss with him?
A A couple of things. I wanted to, one, thank him for acting quickly back in October,

November, when we wanted to borrow the funds, for acting quickly in approving it. Also to remind him that I was pleased our projections had worked themselves through. I was able to pay the note when I said I had paid it, and also to talk with him about the possibility or what would be necessary if I ever wanted to come back and borrow again. It presented also an opportunity to begin a discussion depending on how the conversation was going to what the next steps were in terms of I knew the $4 million line was going to be up for renewal and started to talk to him about that.
So by taking the check over, it presented a good opportunity for me to sit and have an informal discussion with him.
Q Did you have an appointment?
A I called and I believe I had an appointment with him, though he was not there.
Q You had an appointment and he didn't show up?
A No. I called over and spoke to either -- I really don't recall. It was either to he or his assistant or secretary, whatever, who indicated that he would be there at a certain time

and I said fine, I would come over to see him.
Q So you just said, I'm coming by?
A I said I'm coming over, I wanted to meet with him and leave my message, and it was to pay the November note, pay it off.
Q You did --
A I don't recall, unfortunately, whether I spoke to him directly or to his assistant, but in either event, I said the same thing to either one, that I was coming over to see him, and that's when I went to the bank.
Q You told them you were coming to pay off the million two loan?
A I believe so. I said I was coming to see him to pay off the note we had in November.
Q When you got there, Mr. Schwartz, as you said, was not present?
A No, he was not.
Q So you never met with him on the day that you delivered the check?
A Now, I waited for awhile. I think the woman there said he would be returning or she thought he would be returning from a

meeting shortly, so I waited.
Q How long did you wait?
A Half hour, 40 minutes maybe, maybe along those lines.
Q And you didn't take the check with you when you left, though?
A Well, I started to, but the woman there asked if she could help me. I told her why I was there and she said if I wanted to, she could take care of it.
Q So you gave her the check?
A Yes, I gave her the check.
Q And told her which loan it was paying off?
A I said it was paying a loan off. I think she looked it up in her system and asked me if I wanted a receipt and I said sure, took a receipt, left a message for Craig to call me when he got back. She apologized that he wasn't there or he must have left the meeting and gone to lunch or something to that effect, but he was still expected back that day.
Q So solely because the lady asked to help you is the reason you left the check?

A I believe so. She ask me if she could help me and I told her why I was there and she said she could take care of that if I wanted.
Q In practical effect there would have been no difference in making the payment on that Friday as opposed to the next Monday?
MR. BURKE: What's the question?
A Is there a question?
\- - -
(Whereupon the pertinent testimony was read by the court reporter.)
\- - -
MR. BURKE: Object to the form. I don't believe that's a question.
A Probably not, no.
BY MR. GEBHARDT:
Q When you requested the check, you understood that writing that check would result in a draw upon the $4 million line of credit?
A It may or may not have.
Q Did you know that writing the check would result in a draw on the $4 million line of credit?
A Well, depending on how the bank

was accounting for, that could have been the case.
Q You knew at the time the check was written that CCI had an outstanding balance on the line of credit, didn't you?
A I think, yes.
Q And you knew that writing that check would increase the outstanding balance on the line of credit?
MR. BURKE: Objection, asked and answered. You can answer it again.
A Well, do you want to ask the question again or repeat it?
\- - -
(Whereupon the pertinent testimony was read by the court reporter.)
\- - -
A That would depend on whether or not there were funds still sitting in our account that would not have been swept by the bank and their cash management system. So to the extent there were funds prior to that, then I guess there would have been a zero impact.
BY MR. GEBHARDT:
Q But you didn't know that.

MR. BURKE: Didn't know what?
BY MR. GEBHARDT:
Q Whether there were any deposits that had been made that day?
A That were sitting in our account?
Q Yes.
A I know funds had recently come in, so I believe there were funds sitting in the account, but I couldn't tell you how much.
Q Did you verify what the outstanding balance was or what the deposits had been?
A I verified what our overall balance was.
Q So then you knew that writing that check would constitute a draw on the line of credit?
A No.
MR. BURKE: Objection, asked and answered. You can answer again.
A It would have drawn a line of credit only to the extent that the funds had possibly been swept by the cash management system.
BY MR. GEBHARDT:

Q What time did you go into AllFirst, in the afternoon, after lunch, wasn't it?
A Late morning, early afternoon, somewhere in that time frame.
Q Before you left, you would have verified the status of the account that had the line of credit facility?
A Either that or the night before.
Q And based on the information that you had available to you at the time you wrote the check, you were of the belief that writing that check would require a draw on the line of credit?
MR. BURKE: Objection for the fourth time to the extent that question has been asked and answered. I'll let my client answer it one more time.
A Depending on whether or not funds had been moved from our account into the cash management system, then there would have been no impact on the line. To the extent that there was, then there would have been an impact theoretically on the line.
BY MR. GEBHARDT:

Q I understand that, how it works. What I'm asking you, your personal belief, at the time you wrote the check based on your inquiry as to the status of the account and so on, your understanding was that writing that check would require a draw on the line of credit?
MR. BURKE: I object and I am going to ask the court reporter to read back the previous instances where that question has been asked and answered.
MR. GEBHARDT: The question stands as it is. You have a question pending, phrased differently and he can answer this particular question as to his personal understanding of the account status.
MR. BURKE: Read back the last question, please.
\- - -
(Whereupon the pertinent testimony was read by the court reporter.)
\- - -
MR. BURKE: Objection again. This answer has been asked five times of this witness and apparently counsel keeps asking the

same question with the hopes of a different answer. I'll let the witness answer the question again.
MR. GEBHARDT: Let me phrase it correctly because the witness has not yet answered the question.
BY MR. GEBHARDT:
Q You indicated you verified the status of the account and the line before you wrote the check. Right?
A I verified that funds had come into the company from various sources.
Q What funds?
A Off projects, sale of equipment.
Q You knew the amount of funds that had come in?
A We had taken in some large deposits. Our deposits had increased as we had projected them to do so.
Q Did you quantify what those deposits were before you wrote the check?
A Yes. I knew generally the dollar amount that we recently had taken in over the course of the previous couple of days, even that

day.

Q It was your view at the time you wrote that check that writing that check would not require a draw on the line of credit?

MR. BURKE: Objection, asked and answered. Answer it again.

A To the extent that funds had not been swept out of our account by the cash management system, there would have been no impact to the line. To the extent that there was a difference, then by use of the cash management system, funds would have been taken from that.

BY MR. GEBHARDT:

Q The question still remains, I understand to the extent there were collections, to the extent there was this, this is how it would work. My question to you still is, when you wrote the check and handed it in to AllFirst, did you believe that you were making a borrowing on behalf of CCI under the line of credit or did you think that were sufficient deposits to cover the payment, you personally at the time you wrote it?

MR. BURKE: Objection, asked and answered.

BY MR. GEBHARDT:

Q I understand what could have occurred and might have occurred and different things, but what did you think was the situation when you wrote the check and handed it in?

MR. BURKE: Same objection. Go ahead.

A I thought or believed that there were some funds still in our account that had not been swept because there hadn't been time. Those funds were available. That in the tally of it, we had funds available to pay this note off. And so I instructed the check was to be drawn. Whether or not there was impact on the bank's records on the line of credit or not, I can't say. You have to go over the bank's records and see what, if any, impact there would have been.

Q In fact, CCI had not collected the cash that it had anticipated collecting when the $1.2 million was borrowed, isn't that true?

MR. BURKE: Objection to form. You can answer.

A Say that again.

- - -

(Whereupon the pertinent testimony was read by the court reporter.)

- - -

A Rephrase that, collected the money.

BY MR. GEBHARDT:

Q CCI's cash flow problems had increased as of February 2000 beyond what they were in November of 1999, isn't that true?

A No, I don't believe that to be the case.

Q Isn't it a fact that CCI over the next five months, counting from February, was anticipating substantial cash flow shortfalls?

MR. BURKE: What time frame?

MR. GEBHARDT: Five-month period counting from February of 2000.

MR. BURKE: No, the time frame is when did CCI anticipate?

MR. GEBHARDT: From February.

A You have to give me the time frame to which to refer to, the date of February 11th?

BY MR. GEBHARDT:

Q February 11th, you knew that CCI was having cash flow problems on February 11th, didn't you?

MR. BURKE: Objection to form. You can answer.

A I knew that CCI had cash flow problems, issues when I talked to the bank in November, which we clearly told them about. And I would have to say by February 11th, it appeared as though cash flow problems had improved somewhat, but we still had some issues.

BY MR. GEBHARDT:

Q You're saying you thought that CCI's cash flow position had improved as of February 11, 2000 beyond what they were in November of 1999?

A Well, I would have to look at the report, whatever cash report we may have had in November, and compare it to a cash flow report we might have gotten at the end of January or February, and I could more specifically tell you.

Q I'm not asking for the specific numbers. I'm asking whether at the time you wrote the check, was it your understanding that CCI had

a cash flow problem that was worse than it had in November when the money was borrowed?
A No, I don't believe it was worse.
Q You thought it was better?
A Well, I think it had improved somewhat.
Q And by somewhat, what do you mean?
A By problem, what do you mean?
Q By problem, I mean not having sufficient money to operate the company.
A Well, we had enough money to operate the company at that point, so I guess by your definition we didn't have a problem.
Q You understood that over the succeeding months CCI was not going to have sufficient funds to operate, didn't you?
A On what date?
Q As of February 11th.
A Not necessarily. I knew that we had not necessarily cleared all of our problems, but the problem you're saying, we didn't have enough money to operate, clearly wasn't the case on February the 11th.

Q We've established you made the payment on behalf of CCI on February 11, 2000. And I think it's also without dispute there was a meeting held in which you attended and there were representatives of AllFirst on February the 18th. Does February the 18th accord with your recollection?
A On February 18th, I asked for a meeting with Mr. Schwartz and Mr. -- well, Mr. Schwartz, probably.
Q And there was a meeting that actually was held on February the 18th. Correct?
A Yes.
Q That was a Friday?
A Okay.
MR. BURKE: Do you know if it was a Friday or not?
BY MR. GEBHARDT:
Q If you need a calendar, we can get one. Was it a Friday?
A Was it a Friday?
Q Yes.
A Okay.
Q You called Mr. Schwartz to ask

for the meeting?
A As I recall.
Q Let's assume, and I'll represent to you that February 17th was a Friday and, of course, February 11th was then a Friday, when did you call Mr. Schwartz to set the meeting up?
MR. BURKE: February 17th was a Friday or February 18th was a Friday?
MR. GEBHARDT: February 18th is a Friday and February 11th is a Friday and the meeting was February the 18th.
BY MR. GEBHARDT:
Q My question is: You had payment on a Friday and a meeting the succeeding Friday. When did you call Mr. Schwartz to set up the meeting of February the 18th?
A I think I called the morning of the 18th.
Q The morning?
A I think.
Q So the meeting was in the afternoon?
A I believe so, yes.
Q Now, when you attended that

meeting, who was present?
A Well, let's see, the meeting was supposed to be with Mr. Schwartz and Mr. Zarcone, but also in attendance were about five to six other people from the bank, plus two people on the speaker phone.
Q I can represent to you that those were Mr. Elias and Mr. Gibson.
A On the phone?
Q On the phone, yes. You saw Mr. Schwartz there and you saw Mr. Zarcone there?
A Yes.
Q And the other people who may have been there you don't recollect?
A Mr. Meyers, Mr. Trout, two or three others.
Q Now, did you ask for all these people to be in attendance?
A No.
Q Do you have any understanding of why all these people attended the meeting?
A No.
Q You called up Mr. Schwartz to say I would like to meet with you this afternoon and

you have five people in a meeting and two people on an extension phone?
A That's right.
Q And did that surprise you?
A Yes.
Q Did you ask why is everybody here or something to that nature?
A Yes.
Q And what were you told?
A There really wasn't much of an answer.
Q Did you tell the bank there were major problems with CCI when you called Mr. Schwartz?
MR. BURKE: Objection to form. You can answer.
A When I called Mr. Schwartz, I said I would like to come in and talk with you, that we received an update to some project reports and that it looked like the problem with Scott Air Force Base in particular had not moved forward to the extent I had hoped and I wanted to come in and sort of talk to him and tell him, keep him informed and tell him where we were at.

BY MR. GEBHARDT:
Q Did you tell him CCI had suffered as of year end a $6 million loss?
A In the phone conversation?
Q Yes.
A I don't believe so -- I don't recall.
Q Did you attend by yourself?
A I had intended to, but at the meeting I did not.
Q And who attended with you?
A Bob Chernicoff attended.
Q This is the same Mr. Chernicoff whose office we're in now?
A Yes.
Q And did you understand at the time of that meeting that Mr. Chernicoff was a bankruptcy lawyer?
A No, I did not.
Q You had no idea he was bankruptcy lawyer?
A No. You mean as far as that being his known specialty?
Q Right.

A No.
Q When did you contact Mr. Chernicoff?
A I had talked to Mr. Chernicoff for the first time that morning.
Q So Mr. Chernicoff had not represented CCI or you prior to this meeting on February 18th?
A Well, the attorneys that I typically use, I'll say corporate counsel, is located in Pittsburgh, and so I had asked for a recommendation for an attorney in Harrisburg who was used to dealing with loan documents, bank loan documents.
MR. BURKE: I will caution the witness not to reveal any communications he may have had with his lawyer or CCI's lawyer regarding anything.
A Okay. Anyway --
MR. BURKE: What's the question again?
BY MR. GEBHARDT:
Q Had Mr. Chernicoff at any time represented CCI or Mr. Ortenzio individually prior

to that February 18th date?
A No.
Q He was called for the first time, then, by you on February 18th?
A Yes. I met him for the first time.
Q At what time did you meet with him?
A I think I met him probably two hours before I was on my way to the bank.
Q And you retained Mr. Chernicoff based on a recommendation from the company's counsel in Pittsburgh?
MR. BURKE: When you say you, do you mean CCI?
MR. GEBHARDT: CCI.
MR. BURKE: Let me just speak with my client regarding the attorney/client privilege issue. You're asking for substantive substance of the communication.
MR. GEBHARDT: He already said he was referred to Chernicoff by lawyers in Pittsburgh and I would like a clear answer to the statement and I don't think there's any

in February of that year?
A Well, I didn't in February. I wasn't planning on negotiating in February.
Q I thought you indicated the reason you called the meeting was to discuss the renewal or renegotiation of the line of credit and you needed counsel because there might be difficult discussions.
MR. BURKE: Objection to misstatement of prior statement.
A You're talking about the meeting on the 18th?
BY MR. GEBHARDT:
Q Yes.
A No. That meeting on the 18th was not to discuss, at least on my part, not to discuss the $4 million line of credit. I wasn't there to discuss any of the notes. I called to talk to Craig Schwartz to go in and tell him that -- just what was going on with the company. One, that the project at Scott Air Force Base was still having some problems. Our claim was not going to be submitted when we thought it would be, that I had a meeting with the bonding company and

that I had been talking to them about that project and another one in particular, and that I had a meeting coming up with them and that we were going to ask them to give us assistance on that project, which is all what I said in the meeting, though I was intending the meeting to be Craig Schwartz and Mike Zarcone. Instead as you stated, I walked into a roomful of people, two people on a conference phone, and so it was more of an inquisition than a meeting that I had set up.
Q You were the only party represented by counsel?
A Unless one of the other people there was an attorney or inhouse counsel, then I was the only -- he was the only attorney, possibly. I don't know for sure.
Q So I'm not confused about what you were calling a meeting for. That meeting was not to discuss or renegotiate the line of credit that CCI had?
A No.
Q It was just to review the company's finances and bring the bank current?
A Just to discuss with Craig

Schwartz as we -- a practice we had always done, basically keep him informed what was going on with the company, what we were doing, so as I told -- as I ended up telling a roomful of people, so they didn't hear something from somebody else, that they heard -- whatever the situation was they heard it from me.
Q I guess my question then still involves, if you were going to sit down with a banker and bring him up to date on what had been happening with a company, why was a lawyer accompanying you?
MR. BURKE: I'll object. I believe the witness has testified regarding the reason the lawyer accompanied him.
A I stated the circumstances under which he suggested that he come along.
BY MR. GEBHARDT:
Q I guess the transcript will bear us out. I understood you to say that you were about to enter into negotiations or you were going to begin negotiations about the line of credit. You thought there might be some difficulty or we will call it complex or whatever kind of issues

you want, that you might need the assistance of counsel to address.
MR. BURKE: Objection.
MR. GEBHARDT: Let me finish what I'm saying first.
BY MR. GEBHARDT:
Q Therefore, you contacted Mr. Chernicoff at the recommendation of other counsel and he suggested to attend the meeting, but my understanding now you're telling me you were simply sitting down to bring the bank up to date with what had been happening at CCI.
MR. BURKE: Objection. Number one, there's no question pending -- and let me just finish my objection -- and I object to the mischaracterization on several facts as to the prior testimony. Counsel --
MR. GEBHARDT: I'm not trying to quote his prior testimony, but I'm confused --
MR. BURKE: Let's limit our questions to the facts and what was happening as opposed to what was previously testified to.
BY MR. GEBHARDT:
Q To clear up my confusion, it is

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when all was said and done?
Q As of today.
A Yes, as of today.
Q What magnitude is there?
A They're representing approximately a $32 million loss.
Q During the meeting with the bank on February 18th, did you disclose to anyone that the $1.2 million had been repaid by a draw on the line of credit?
MR. BURKE: Objection to form. You can answer.
A My statement in that meeting was in response to the question, was it had been repaid, the company had repaid.
BY MR. GEBHARDT:
Q Did you tell anyone that by repaying the loan it was done with a draw on the line of credit?
MR. BURKE: Same objection.
A My words were to ask if it had been repaid, and I said that the company, CCI, had repaid the note.
BY MR. GEBHARDT:

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Q But you didn't give any explanation beyond that?
A I think someone asked -- I think I said with a check drawn out of our account or something to that effect.
Q When you made the payment on February 11th, were you aware of the financial circumstances of the company?
A At that time, that point in time?
Q Yes.
A Generally.
Q And were you aware of the financial circumstances of the company that were reflected on the interim financial statements which are Exhibits 22 and 23 and the cash flow projection which I believe is Exhibit 24?
MR. BURKE: Objection to form.
- - -
(Whereupon the court reporter read back the pertinent testimony.)
- - -
BY MR. GEBHARDT:
Q When you made the payment on February 11, 2000, did you have a general

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understanding of what CCI's financial condition was as is reflected on the two financial statements that are Exhibits 22 and 23 and the cash flow statement that is Exhibit 24?
MR. BURKE: Objection to form.
A No.
BY MR. GEBHARDT:
Q Completely unaware?
A I'm responding to your question, specifically your question.
Q You had no general understanding when you --
A That wasn't your question.
Q I think it was.
MR. BURKE: It wasn't.
BY MR. GEBHARDT:
Q Let me ask it again. When you made the payment on behalf of CCI on February 11, 2000, did you have a general understanding that the financial condition of CCI was similar to what's reflected in Exhibits 22, 23 and 24?
A And my answer was no. The financial condition of the company was not to that degree. It wasn't as bad as those numbers

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represent.
Q And in one week did it turn that bad?
MR. BURKE: Objection to form. You can answer.
A I think in one week there was a different scenario run with the removing of the claims that we had hoped to get. I think there were some other impacts on a job or two which had been unanticipated with respect to some additional problems or delays. And so when the numbers were rerun, and this is what they were rerun to, it presented a much worse situation financially for the company than what we had been carrying prior to them or what I had been aware of prior to that.
Q You knew when you made the payment that CCI's financial condition was not a good financial condition, didn't you?
A Good as compared to what? You already asked me how it was in comparison to what it was in November.
Q When you made the payment on February 11th, you knew CCI was going to lose money for the preceding fiscal year?

L

Gerard L. Elias

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A The loan documents.
Q The four million dollar line of credit note?
A All of the loan documents.
Q Okay. The 1.2 million dollar note, the equipment note, are those the documents?
A I don't -- I don't know that I reviewed the 1.2 million dollar note because I don't know that I was aware of it.
Q Did you determine on the 23rd that there had been a material adverse change in CCI's financials?
A Well, certainly by that time, but actually prior to that time.
Q Okay. Is there any written analysis of that anywhere?
A No.
Q What documents did you review and rely upon in determining that there had been a material adverse change?
A Company's financial position, statement.
Q Who gave you those documents?
A I received them probably from Craig Schwartz

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or contained in the file.
I mean, I don't know exactly who handed them to me.
Q Let me show you exhibit S-14.
I'm going to make this easier. There's one over there, I think. Is that it, the charge-off memorandum?
A Yes.
Q Just as a matter of curiosity, Mr. Elias, under the section Reason for Charge-Off Comments, the last sentence on the first paragraph -- and I see you're squinting; I don't make the print this small, that's not me, that's your bank -- it states that due in large part to the information shared on February 18th, the bank demanded payment on February 24th.
A Wait a minute, I'm not reading the same document.
Due in large part -- oh, all right, the first paragraph, sorry.
Q Do you see that?

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A Due in large part --
Q Right.
My question is, what was the small part?
A I don't understand that question.
Q Well, the memo -- I don't understand it, either, but the memo says that due in large part to what occurred on the 18th, the bank called the loan.
A Correct.
Q It means there would be another part to this --
A No.
Q -- that played a role in the bank declaring the loan in default.
A That's it.
Q If there's a large part somewhere, there's a small part elsewhere.
A No.
Q There was no small part? It was all --
A That's, that's -- that's someone's term, due in large part. People say that all the time, due in large part to. That doesn't mean that there

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necessarily had to be something else.
Q I'm not suggesting that. I'm only asking if there was a smaller part that played a role in the bank's declaring the note in default.
A No.
Q When did --
A I would ask you to ask the question again because I don't understand it.
Q When did the bank -- when did you first learn that CCI had repaid the 1.2 million dollar note from the four million dollar line of credit?
A I don't recall, but it was well after the events of the, of the time that we're talking about.
Q Was it before or after the declaration of default --
A Well after.
Q -- on the 23rd or 24th?
A Well after.
Q How did you determine or find out how that occurred?
A I believe that Mr. Gibson advised me upon

A We were advised that the company was in severe distress.
Q By whom?
A By Mr. Ortenzio and, I believe, his attorney was, was present as well.
Q Did he use the word severe distress, or is that your conclusion?
A Oh, I don't recall. I'm paraphrasing.
Q Well, could you just tell me specifically if you can, to the best of your recollection, what you were told rather than what you concluded for the moment?
A We were told that the company was in severe distress.
Q Okay. Why did -- was there any comment as to why the company was in severe distress?
A There were a number of jobs where problems had arisen to where the company's -- that is, CCI's -- bonding company needed to be apprised of those problems.
We were advised that there was an upcoming

loss to be reported to the tune of six million dollars, I believe. We were advised that there were some problems with some of the subcontractors on the jobs.
Q All right. Mr. Elias, do you recall if anything was asked of the bank by Mr. Ortenzio or his attorney?
Did they ask for more money, for example, at that meeting?
A I don't recall.
Q Well, can you tell me how that meeting concluded? On what footing? Where was it left?
A Generally, it was left that, that the company had stopped making payments sometime well prior to that meeting.
Q To the bank, or to its subs, or to everybody?
A Just making payments in general, yeah, to its subs certainly; that the bonding company had been advised, and I believe that the bonding company was going to be meeting once again the following week with

the company, and that they would advise the bank of those discussions with the bonding company.
Q Did you take notes at that meeting?
A I don't believe I took notes myself.
Q Do you know of anyone who did?
A Mr. Gibson could have.
Maybe some of the people at the meeting itself. Since I wasn't there present, I don't know if those individuals took notes.
Q Did you see Mr. Gibson take notes?
A I don't recall.
Q But you did not?
A Not that I recall.
Q Okay. What happened after that meeting?
A I think my next involvement would have been the following week. I believe I was in Harrisburg at the time, and we were discussing the situation, and it was disclosed that the line of credit had grown; in other words, the outstanding balance had grown in the line of credit. And that concerned us because that was contrary to our understanding that we would wait

to see the results of the company's meeting with the bonding company, and that understanding was from the prior Friday.
Q Wait a minute, let me go back.
Between the 18th and the 23rd, there was increased borrowings against the four million dollar line of credit?
A Yes.
Q Do you recall the amounts?
A I do not.
Q Okay.
A We became concerned because it was our understanding that we were effectively all at a standstill, waiting to see what the bonding company would say, and as it turned out that, that checks were continuing to come and hit against the account.
We became alarmed at that since we had been previously told that payments had stopped.
Q Is it conceivable that those checks, by the way, had been sent out prior to the meeting on the 13th?

A I don't recall.
Q Did they ask for more money?
A I don't recall.
Q Do you recall telling Mr. Ortenzio that the bank wanted its fucking money or you were leaving?
A I don't recall.
Q Is it possible you would have said that?
A Possible.
MR. SWICHAR: Excuse me.
Q (By Mr. Swichar) Do you recall when the decision was made -- did you -- were you involved in the decision to freeze CCI's bank accounts?
A Yes.
Q When was that decision made?
A I believe it was Wednesday, the 23rd.
Q And did you make that decision yourself?
A I think there were probably a few people involved in the decision --
Q Who else?
A -- but I was in the group.
Q Who else?

A Well, I think probably Mr. Zarcone was involved. I can't recall specifically.
Q Did the bank begin to freeze CCI accounts on the 23rd?
A I think that was the date.
Q That was prior to the declaration of default?
A No.
Q Well, the declaration of default -- letter, at least -- is dated the 24th.
A Correct.
Q When was the declaration of default, and how was that conveyed to CCI?
A I believe it was conveyed that date when we became aware of the fact that the checks were continuing to --
Q What date is that?
A The 23rd.
Q The 23rd?
A -- draw down on the line.
I believe we contacted Mr. Ortenzio to make

inquiry as to why that was occurring and asked for some additional support if we were to be expected to continue to, to fund.
Q Okay. So on the 23rd, you did ask for additional support?
A Yes.
Q And what kind of support did you ask for?
A Guarantees, additional collateral, some support payment.
Q What additional guarantees did you request?
Guarantee the four million dollar line?
A Yes.
Q And what other decision?
A Additional collateral.
Q As, for example?
A Oh, just whatever additional collateral might be worthwhile.
Q So on the 23rd, I assume Mr. Ortenzio said no.
A Correct.
Q And at that point, you froze the accounts?

A Correct.
Q Instantly, on the 23rd?
A I believe so.
Q And you made the decision to bounce CCI's checks on the 23rd as well?
A Correct.
Q And that began on the 23rd?
A I believe that's the date, yes.
Q And that was prior to any written declaration of default?
A Correct.
Q Was it a situation where the bank also decided to reverse certain payments on checks that had already just cleared?
A I don't recall that.
Q Did you review any documents prior to your deciding to declare CCI in default?
A Sure.
Q Which documents did you review?
A The loan documents.
Q Pardon me?

M

Craig J. Schwartz

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Q And do you recollect whether under the terms of the line of credit CCI was required to have the line of credit at a zero balance for thirty consecutive days in a twelve-month period?

MR. SWICHAR: Could I hear that back?

(Question was read by the Reporter.)

MR. SWICHAR: I don't understand the question, but if your own witness does, fine.

And if there is a document, why don't you just show it to him?

MR. GEBHARDT: Actually, I will withdraw the question because the March 23rd, 1999, commitment does not have that as a requirement, but the preceding one did.

So we're operating under what's been designated Schwartz 12, so I will withdraw the question.

Q (By Mr. Gebhardt) Now, turning to Schwartz Exhibit 12, which is the commitment letter for the four million dollar revolving line of credit, what were the proceeds of draws on the line of credit to be

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used to do?

A Finance work in process and accounts receivable.

Q Is repaying in full any fully funded loan or credit facility an authorized use of loan proceeds?

MR. SWICHAR: I object to the form of the question.

Q You may answer.

THE WITNESS: Read it back, please.

(Question was read by the Reporter.)

MR. SWICHAR: I object to the form, particularly the word authorized.

A No.

Q (By Mr. Gebhardt) Okay. Now, what exactly are accounts receivable?

A Payments from customers of the borrower for services rendered.

Q Okay. And this line of credit was intended to provide CCI with --

MR. SWICHAR: Are you just leading him down?

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I'm just objecting.

MR. GEBHARDT: Then object.

Q (By Mr. Gebhardt) The line of credit was intended to permit CCI to have funds available pending the receipt of payment from customers on the accounts receivable?

A Yes.

Q You were asked some questions relating to the payment of the monthly installments on the two million dollar equipment term loan.

Do you recollect those?

A Yes.

Q And I think your testimony was that they were made through the use of the revolving, four million dollar revolving line of credit, right?

A Yes.

MR. SWICHAR: No, I don't think he said that.

I think he said the repayments were made either through checks or automatic, and then we went to the next step, which was the impact of it.

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Q Was making the monthly installments of principal and interest on the equipment term loan an authorized use of the four million dollar revolving line of credit?

A Yes.

Q Why is that?

A Because a term loan is to be repaid, of course, over a period of time, monthly, and through profits of the company, and those profits are a part of the receivables that they come in. So that line is used because that -- the profits are in -- a part of the accounts receivable, and the line gets paid down that way.

(Gerard L. Elias entered the conference room.)

Q Had there been no term loan from CCI -- no -- excuse me, let me rephrase that.

Assume there had been no four million dollar line of credit, what would the source of payment have been for CCI to repay the monthly installments of principal and interest on the two million dollar

equipment loan?

MR. SWICHAR: Objection as to form.

A Excess cash flow.

Q Where would that come from?

A The collection of accounts receivable.

Q Okay. Now, when the 1.2 million dollar loan was paid off on February 11, 2000, with a draw on the four million dollar revolving line of credit, I believe the testimony has been that a check was delivered by Mr. Ortenzio to make that payment.

Does that accord with your recollection?

A Yes.

Q Was that payment delivered directly to you?

A No.

Q Were you at any time ever told by anyone at or about February 11, 2000, that that check represented a draw on the four million dollar revolving line of credit?

A No.

Q Had you known on or about February 11, 2000, that the check presented by Mr. Ortenzio on behalf of

CCI represented a draw on the four million dollar revolving line of credit, what action, if any, would you have taken?

A I would have not honored the check.

Q If Mr. Ortenzio had called you prior to bringing the check in and expressly stated that he intended to pay the 1.2 million dollar loan with a draw on the four million dollar revolving line of credit, what would your response to Mr. Ortenzio have been?

MR. SWICHAR: Objection to form.

A No, don't bother, or why are you paying it off with the line?

Q Now, when the --

MR. SWICHAR: Do you want the answer to that?

Q When the 1.2 million dollar line of credit -- excuse me -- when the 1.2 million dollar loan was discussed, what did Mr. Ortenzio tell you was the reason CCI needed that advance of funds?

A They needed the money to keep operating

because the cash flow situation of the company was in a depo -- disposition.

Q Did Mr. Ortenzio express at all how long he believed that cash flow problem would continue?

A I believe some cash flow projections given to us indicated February, through the end of February.

Q And from what source based on your discussions with Mr. Ortenzio in November of 1999 did you anticipate the 1.2 million dollar loan being repaid?

A Excess cash flow.

Q Okay. And based on Mr. Ortenzio's discussions, did you expect that excess cash flow to put CCI in a positive cash position?

A Yes.

Q And would you have expected at the time of the 1.2 million --

MR. SWICHAR: Object to all these leading questions.

MR. GEBHARDT: That's fine.

Q (By Mr. Gebhardt) Would you have expected

the 1.2 million dollar loan had it been repaid from the excess cash flow for there to have been a positive balance on the four million dollar revolving line of credit?

A I would have expected the line to have a zero balance.

Q Now, you were asked --

MR. SWICHAR: Wait.

Can I hear that question and answer back again?

(Record was read by the Reporter.)

Q (By Mr. Gebhardt) Now, I believe the documents establish based on the commitment letters that the 1.2 million dollar loan was to be due on March 31, 2000, if not demanded sooner, and that the four million dollar line of credit expired on April 30, 2000.

What was your anticipation of what would occur had CCI Construction not had sufficient cash flow to repay the 1.2 million dollar loan by March 31, 2000?

Q Now, I think you indicated that you did not know when you spoke with Mr. Ortenzio on or about February 11 what the source of the payment might have been that repaid the 1.2 million dollar loan.
A That's correct.
Q Do you know whether, based on your activity as an account officer, whether Mr. Ortenzio had the personal financial ability to have made that payment?
MR. SWICHAR: Objection as to form.
A Yes, I believe he did.
Q Did you know for a fact whether CCI had accounts with any other banks at the time?
A I was not aware of any.
Q But did you know one way or the other?
A No.
Q Did you know whether CCI was into the line of credit at the time the payment was made?
MR. SWICHAR: Objection.
I don't know what that means, into the line of credit.
Q Had a positive balance on the line of credit

at the time the 1.2 million dollar payment was made.
Did you know that on February 11?
A No, I did not.
Q Now, after you learned that the check had come in, did you have any contact with Mr. Ortenzio about the consequences of the payment having been made?
In other words, why did you send this letter that's been marked as S-13 to Mr. Ortenzio confirming that the 1.2 million dollar line had about --
MR. SWICHAR: Objection as to form; the letter says why he sent it.
Q That's 13.
Why did you send that letter, S-13?
MR. SWICHAR: Objection as to form.
It states on the letter why he was sending it.
A As a follow-up to Mr. Ortenzio's request to get his surety back because, because the loan was paid in full.
Q Okay. Now, that was a request made to you

directly?
A Yes.
Q And was any sense of urgency expressed by Mr. Ortenzio in the call requesting the return of the suretyship?
A Yes, it would have had to be for me to go through the process to get the surety back quicker than the normal course of business.
MR. SWICHAR: That's not responsive.
I object to the answer, form of the answer.
Q Did you take action to get it back quicker than the normal ordinary process?
MR. SWICHAR: He testified he had no recollection.
Objection.
Q You may answer.
A Yes, I have -- I did.
Q And why did you take that extra effort?
A Mr. Ortenzio's request.
Q You were also asked a couple questions about

banking custom and practice.
Do you recollect that?
A Yes.
Q Do you know whether banking customs and practice are binding law, enforceable --
MR. SWICHAR: Objection to the question.
Q -- in courts?
A No, I do not.
Q Do you know whether banking customs and practices constitute a prohibition upon borrower conduct?
A No, I do not.
MR. GEBHARDT: No further questions.
MR. SWICHAR: Just a couple.
EXAMINATION BY COUNSEL FOR THE DEFENDANT
BY MR. SWICHAR:
Q Mr. Schwartz, you testified that the repayment in full of the 1.2 million dollar loan was not an authorized use of the four million dollar line of credit; is that correct?

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A Yes.
Q Is there any document anywhere in this world that states specifically in regard to repayment in contrast to use of the funds that the funds -- that the four million dollar line could not be used to repay the 1.2?
A There's no documents that says it cannot be used to repay it.
Q Is there any -- would there have been any impediment that you're aware of to the bank stating in any document binding on Mr. -- binding on CCI or Mr. Ortenzio to prohibit the four million dollar line of credit to be used to repay the 1.2 million dollar loan, such as we discussed earlier, a negative covenant?
A Other than the agreed-upon use of proceeds of that four million dollar loan.
Q Right, right.
Is there any impediment to the bank expressly stating as a negative covenant that the four million dollar line of credit could not used to repay

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the 1.2 million dollar loan?
A No.
Q The answer's no?
A No.
Q How was CCI to repay the 1.2 million dollar loan?
A From excess cash flow.
Q And I think we -- I asked you earlier, but correct me if I'm wrong, since Mr. Gebhardt asked, touched on that, where is that in any document?
A I don't believe it's in a document.
Q Okay. Is there any reason or any impediment to the bank not putting that in any document that this loan could only be repaid from excess cash flow or excess profits?
MR. GEBHARDT: Let me object to, again, the compound nature. Reason and impediment are two different things.
MR. SWICHAR: I'm using his word -- I hear you.
MR. GEBHARDT: You're asking is there a

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reason --
MR. SWICHAR: I'll ask another question.
Q (By Mr. Swichar) Are you aware of any impediment that prevented the bank from stating in any document binding on CCI or Mr. Ortenzio that the 1.2 million dollar loan could only be repaid from excess cash flow or profits?
A No.
Q You testified with respect to the equipment note that that was a term loan; is that correct?
A Yes.
Q Is that different than the 1.2 million dollar loan?
A Yes.
Q Okay, because payments were to be made monthly?
A The whole nature of the transaction was different.
Q The equipment note?
A Yes.

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Q Okay. You testified that payments on the equipment note had to be repaid through profits of the company, from collected accounts receivable, if I took notes correctly; is that correct?
A Yes.
Q Is that stated anywhere in the equipment note or any related document?
In other words, limiting the monies that can be used to repay the equipment note.
A Not that I'm aware of.
Q You testified when the 1.2 million dollar note was repaid on February 11 you were not aware that the payment had been made from a draw on the four million dollar line of credit; is that correct?
A Yes.
Q That information was readily available to you, was it not?
A Within a day or so.
Q Within a day or so?
A Yes.
Q Wouldn't that information have been on your

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computer?
A Not until the payment actually gets posted.
Q Okay. The next day?
A Possibly.
Q Okay. Certainly before the note was returned?
A Yes.
Q And marked satisfied?
A Yes.
Q You had the opportunity to learn the source of payment?
A The note was not returned.
Q The note, the guarantee, the suretyship.
A Yes.
Q Prior to your delivery of the guarantee marking it paid, you had the opportunity to determine the source of the money, is that correct -- source of the payment -- is that correct?
A Yes.
Q And you never inquired as to the source of the money -- source of the repayment of the

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1.2 million dollar loan; is that correct?
A Yes.
Q And, again, where did you think the money came from?
And I think your earlier answer was you didn't know, you didn't care; is that correct?
MR. GEBHARDT: Objection to the characterizing of the witness' earlier testimony.
A I didn't know where the money came from.
Q Well, you didn't ask, did you?
A No, I did not.
Q And, therefore, you didn't care, did you?
MR. GEBHARDT: Objection.
Q If you had cared, you would have asked; is that right?
A I didn't have the opportunity to speak to Mr. Ortenzio.
Q You could have called him on the phone?
A I -- that's correct.
Q Could have gone over to CCI and knocked on the door and asked him?

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A Yes.
Q Okay. You didn't do either, did you?
A No.
Q If you had cared, you would have done it?
MR. GEBHARDT: Objection.
A Most likely.
Q The fact is when the 1.2 million dollar note was repaid, you were just happy to see that it was repaid, weren't you?
A I don't think I'd put it in those words.
Q Were you glad or sad --
A When I get --
Q -- or something in between?
A When I receive payment, I'm always --
Q Grateful?
A Yes.
Q Okay. Now, Mr. Ortenzio told you you said in November, 1999, that he required the 1.2 million through the end of February, 2000; is that correct?
That's what you stated when your attorney asked you.

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A Okay.
Q Is that correct?
A That was --
Q You said they would need the money, the extra money, the 1.2 million, through the end of February, 2000.
A That was according to the cash flow statements.
Q And that's what Mr. Ortenzio told you, right?
A Yes.
Q Okay. Now, at the time of the repayment of the 1.2 million coincidently in February, 2000, the balance on the four million dollar line of credit allowed for the repayment of the 1.2 from the four million; is that correct?
MR. GEBHARDT: Objection.
Q There was sufficient cushion there under the four million dollar line of credit to repay the 1.2; is that correct?
We went over the numbers.

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ALLFIRST BANK	*	
Plaintiff,	*	
v.	*	CASE NO.: 1:01-CV-786
JOHN M. ORTENZIO	*	
Defendant.	*	

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MEMORANDUM IN SUPPORT OF MOTION TO STRIKE JURY DEMAND

I.
Introduction.

Plaintiff, Allfirst Bank, brought this suit against Defendant, John M. Ortenzio, to nullify his attempt to improperly obtain a discharge of his personal guaranty and to enforce that guaranty against him. The gravamen of Allfirst's action is the rescission of the spurious payment transaction Ortenzio engineered and the collection of what is owed on the guaranty.

Ortenzio filed a demand for trial by jury. Because the inherently equitable nature of the action, Ortenzio has no right to a jury trial. For this reason, Allfirst has moved to strike the jury demand to permit the case to be tried to the Court. This Memorandum is in support of Allfirst's motion.

II.
Basic Facts and The Claims Raised.

A. The Basic Facts.

In March of 1999, Allfirst extended to CCI Construction Company a $4 million line of credit. Exhibit A (Commitment Letter); Exhibit B (Promissory Note). The sole purpose of the line of credit,

as expressly stated in the commitment letter, was to finance CCI's accounts receivable and work in progress. This meant that the line of credit funds were to be used solely to provide short term working capital to pay monthly bills until current accounts receivable were paid by customers. No other use of loan proceeds was permitted. Exhibit J (Phillips at 12; 39-40); Exhibit L (Schwartz at 177-179). The line of credit was unsecured and did not carry Ortenzio's guaranty..

During 1999, CCI's financial situation deteriorated. In November, 1999, Ortenzio requested a temporary loan from Allfirst to tide CCI over what he represented was a short term cash flow shortfall. A meeting was held between Ortenzio and Sheri Phillips, CCI's chief financial officer, and representatives of Allfirst on November 4, 1999. Exhibit C (Schwartz Memorandum). As a result of the meeting, Allfirst agreed to extend a temporary $1.2 million loan to CCI, which would be due on March 31, 2000. Exhibit D (Commitment). Allfirst was unwilling to extend the $1.2 million loan to CCI unless Ortenzio guarantied the loan. To obtain the loan for CCI, Ortenzio gave his guaranty. Exhibit E (Suretyship). This guaranty obligated Ortenzio on the temporary loan and authorized Allfirst to collect the loan directly from Ortenzio to the same extent as if the loan had been made to him. Repayment of the $1.2 million loan was expected to come from the increased cash flow which would result when collections were made on two large, problematic jobs. Exhibit J (Phillips at 34-35); Exhibit K (Ortenzio at 88). In addition, Ortenzio had sufficient liquid assets to make the payment personally. Exhibit K (Ortenzio at 95-96).

CCI's financial condition worsened after the $1.2 million loan was made. CCI, which made a profit the preceding year, lost over $6 million in 1999. Exhibit F (1998 Financial Statement); Exhibit G (Internal 1999 Financial Statement). By February, 2000, CCI projected that it would have a cash flow shortfall of several million dollars over the next several months. Exhibit H (Cash Flow

Projection). This meant that CCI's expected revenues would be millions of dollars short of the funds it needed to continue operating and stay in business. Ortenzio was fully aware of CCI's precarious financial condition and discussed the Company's financial plight and desperate need for cash with Sheri Phillips. Exhibit J (Phillips at 41-44). Ortenzio, however, refused to invest any more of his money in the Company. Exhibit J (Phillips at 45; 51-52). He discussed with Sherri Phillips the possibility of a bankruptcy proceeding. Exhibit J (Phillips at 48).

Ortenzio also was aware of his guaranty of the $1.2 million loan and obligation to pay this sum to Allfirst. In early February, he decided to have CCI repay the $1.2 million loan which he had guaranteed with a borrowing under the $4 million line of credit which he had not guaranteed. Sheri Phillips, the chief financial officer, opposed Ortenzio's plan. Exhibit J (Phillips at 36-38). She believed this repayment would only further restrict and reduce CCI's available cash. Exhibit J (Phillips at 37-38). She also believed that this payment was an unauthorized use of the line of credit, whose purpose was to finance accounts receivable and work in progress and not prepay fully funded loans. Exhibit J (Phillips at 39-40). She refused to write the check to effect the repayment. Her opposition was overridden by Ortenzio, who personally wrote the check that effected a draw on the line of credit. Exhibit J (Phillips at 38); Exhibit K (Ortenzio at 106-107).

On Friday, February 11, 2000, Ortenzio, who had not previously been involved in making payments to Allfirst on outstanding loans [Exhibit J (Phillips at 35-36)], personally went to Allfirst to deliver the check that would repay the $1.2 million loan. Exhibit K (Ortenzio at 105; 108). Craig Schwartz, the Allfirst loan officer, was not present when Ortenzio arrived. Ortenzio gave the check to Schwartz's secretary and asked that it be applied to the $1.2 million loan. After personally delivering the check, Ortenzio telephoned Craig Schwartz to request an immediate return of his

guaranty. He did not disclose that the payment had been made by a draw on the unguaranteed line of credit. Exhibit K (Ortenzio at 110-122; 182-187); Exhibit L (Schwartz at 181). Because of Ortenzio's insistence, Schwartz put a rush request into Allfirst's document control section and notified Ortenzio on Tuesday, February 15, 2000, that he would return the guaranty to Ortenzio as soon as possible. Exhibit L (Schwartz at 190-191). At the time Schwartz returned the guaranty, Allfirst was unaware that the unguaranteed line of credit, which was to be used to finance accounts and work in progress, had been used to repay the guaranteed $1.2 million loan. Exhibit L (Schwartz at 181; 196-198). Allfirst also was unaware that CCI was about to collapse from a lack of available cash.

With his guaranty in hand and believing he was now free from any obligation to pay the $1.2 million loan, Ortenzio requested a meeting with Allfirst. His purpose was to apprize Allfirst of CCI's situation. Exhibit K (Ortenzio at 146-148). The meeting was held on Friday, February 18, 2001 at Allfirst's office, exactly one week after he had CCI borrow money on its line of credit to repay the loan Ortenzio had guaranteed. Exhibit K (Ortenzio at 124). Ortenzio was accompanied by Robert Chernicoff, a bankruptcy specialist he had retained just prior to the meeting to represent CCI. Exhibit K (Ortenzio at 127-128). At the time of the meeting, Ortenzio knew that CCI had lost over $6 million dollars in 1999 and was insolvent by almost a million dollars. Exhibit G (Internal 1999 Financial Statement). Allfirst had no appreciation of the severity of CCI's financial distress until Ortenzio requested the meeting, on Thursday, February 17, 2000, and disclosed the $6 million loss.

In the meeting, Ortenzio presented a cash flow projection that showed that CCI would have a cash shortage over the next 5 months of $5,873,456. He did not reveal during the meeting that the

$4 million line of credit had been used to repay the $1.2 million loan he had personally guaranteed. Exhibit K (Ortenzio at 182-183). The cash flow projection he presented at the meeting did not reflect this use of the $4 million line of credit for this purpose. Exhibit J (Phillips at 59-60). As of this meeting, Allfirst had no knowledge of Ortenzio's use of the line of credit to discharge the loan he had guaranteed. Exhibit L (Schwartz at 181; 196-198); Exhibit M (Elias at 24).

During the meeting, Ortenzio stated that he would be meeting with CCI's bonding company during the next week and planned to solicit financial support from the bonding company. Exhibit M (Elias at 10-12). He agreed to report back to Allfirst on the results of the meeting with the bonding company. He also agreed that CCI would not write any further checks that would draw on the line of credit until he had reported back to Allfirst. Exhibit M (Elias at 10-12).

Despite his promise, Ortenzio, on the Monday following the Friday meeting, personally supervised the writing of checks that were draws on the line. Exhibit J (Phillips at 38); Exhibit K (Ortenzio at 106-107). When these checks were presented for payment, Allfirst dishonored the checks that Ortenzio promised would not be issued. Exhibit M (Elias at 19-20). Because of the flurry of checks that were being presented, despite Ortenzio's promise, Allfirst closed down the line of credit on Wednesday, February 23, 2000 to prevent further draws. Exhibit M (Elias at 19-20). On February 24, 2001, Allfirst formally declared CCI in default and demanded payment. Exhibit I (Default Letter). Allfirst still was unaware that Ortenzio had on February 11, 2001 used the unguaranteed line to repay the $1.2 million loan he had guaranteed. Allfirst did not learn of this use of the line until after the default had been declared. Exhibit M (Elias at 24).

B. The Claims Raised And The Relief Sought In The Complaint.

The Complaint contains three counts derived from common factual allegations. The first

count asserts that the draw on the $4 million line of credit was a conditional payment that did not become effective as a satisfaction of the $1.2 million loan unless and until the outstanding balance of the line of credit reached zero. Because the outstanding balance of the line was never reduced to zero after Ortenzio used the line to repay the $1.2 million loan, his guaranty remains in effect.

The second count raises equitable subrogation. This count asserts that the use of the proceeds of the $4 million line to satisfy an Ortenzio guaranteed obligation was without the knowledge or consent of Allfirst, such that Ortenzio will be unjustly enriched unless that portion of the $4 million line used to repay the $1.2 million loan is subrogated to the benefit of the guaranty of the $1.2 million loan.

The third count raises common law fraud and alleges Ortenzio's conduct in using the line to repay the guaranteed loan amounted to a fraudulent misrepresentation upon which Allfirst reasonably relied to its detriment.

The relief sough under the three counts is virtually identical. Each count, on the various theories expressed, seeks to have the attempted satisfaction of the $1.2 million loan rescinded, canceled, set aside, or disregarded so that the guaranty can be enforced. The three counts ask for a monetary judgment against Ortenzio for what would otherwise be due under his guaranty if he had not presented the check drawn on the line of credit on February 11, 2000.

IV.
Law and Argument.

F. R. Civ. P. 38 provides for the right to trial by jury to the extent required by the Seventh Amendment or by a specific Federal statute. The Seventh Amendment preserves the right to trial by jury to the extent that right existed at common law. Historically, the common law permitted a

trial by jury for actions at law but not for actions in equity. *Tull v. United States*, 481 U.S. 412, 417 (1987). "(T)he Seventh Amendment right to a jury trial attaches to actions at law, not to those in equity." *Mile High Industries v. Cohen*, 222 F.3d 845, 856 (10th Cir. 2000); *Kennedy v. Lasko Company, Inc.*, 414 F.2d 1249, 1251 (3rd Cir. 1969) ("a civil action in the nature of an action at law was triable by jury and one in the nature of an action in equity was not triable by jury.").

The question of whether a party has a right to a jury trial requires a determination of whether the action is one that historically was tried at law or in equity. This determination involves a two pronged analysis which focuses on the nature of the action and the remedy sought. *Tull v. United States*, 481 U.S. 412, 417-418 (1987). *See also Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990). The second prong of the analysis, the more important of the two, focuses on whether the remedy sought is fundamentally more legal or equitable in nature. *Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990).

Suits where the essential nature of the remedy sought is that of recision or restitution are equitable and do not carry the right to trial by jury. *Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1423-24 (9th Cir. 1994) (restitution); *Scheurenbrand v. Wood Gundy Corp.*, 8 F.3d 1547, 1551 (11th Cir. 1993) ("An action for rescission is an equitable proceeding, and as such it carries no right to a jury trial."); *Crews v. Central States, Southeast and Southwest Areas Pension* Fund, 788 F.2d 332, 338 (6th Cir. 1986) ("Historically, an action for restitution seeks an equitable remedy for which there is no Seventh Amendment right to a jury trial."); *Phillips v. Kaplus*, 764 F.2d 807, 812 (11th Cir. 1985) ("And the federal law is clear that an action for rescission is equitable, triable by the court without a jury."); *Gorenflo v. Texaco, Inc.* 735 F.2d 835, 838 (5th Cir. 1984) (suit for cancellation of lease arises in equity and carries no right to jury trial). Where the remedy sought is the

"nullification of the transaction and the restoration of the parties to the status quo ante" the action is in the nature of one for rescission and does not provide the right to a jury trial. *Plechner v. Widener College, Inc.*, 569 F.2d 1250, 1258 (3rd Cir. 1977). As the Third Circuit emphasized in *Plechner* a cause of action focused on obtaining rescission of a transaction will be treated as such no matter how the claims in the complaint are designated. Quoting:

> The right to a jury trial is to be determined from all the pleadings but the words or labels used there are not decisive. The court must consider the real nature of the claims and is not bound by the terminology a pleader chooses.

Plechner v. Widener College, Inc., 569 F.2d at 1257. *See also Schuyt v. Rowe Price Prime Reserve Fund, Inc.*, 835 F.2d 45, 46 (2nd Cir. 1987).

Actions for damages for breach of contract or in tort typically are legal and require a jury trial. *Billing v. Ravin, Greenberg & Zackin, P.A.* 22 F.3d 1242, 1245 (3rd Cir. 1994). Although relief in the form of monetary damages is typical of actions at law, a request for monetary relief does not convert what is otherwise a suit seeking an equitable remedy into a suit seeking legal damages and requiring a jury. Where the claim for a monetary award is intertwined with a primary request for equitable relief, the action is equitable and does not require a jury. *Local No. 391 v. Terry*, 494 U.S. 558, 571 (1990); *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994) ("a request for monetary recovery sounds in equity, and thus does not guarantee a jury trial when it is restitutionary in nature"); *Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1423-24 (9th Cir. 1994) ("Merely because this case involves a claim for restitution of money does not detract from its equitable nature); *Securities & Exchange Commission v. Commonwealth Chemical Securities, Inc.*, 574 F. 2d 90, 95 (2nd Cir. 1978) (no right to jury trial because "the court is not awarding damages to which plaintiff is legally entitled but is exercising the chancellor's discretion to prevent unjust

enrichment."); *Broadnax Mills, Inc. v. Blue Cross and Blue Shield of Virginia*, 876 F. Supp. 809, 817 (E.D. Va. 1995) ("Where a prayer for monetary relief actually seeks restitution or is 'intertwined' with equitable remedies, the nature of the relief is generally equitable.").

Allfirst may be asking for a monetary award, but its suit is fundamentally a request for restitutional or rescissionary relief. Allfirst is asking that the payment made by CCI at the instance of Ortenzio be cancelled and disregarded so that Allfirst may enforce and collect upon the guaranty given by him.

An examination of the three counts of the Complaint demonstrates the equitable nature of the action. One count asks that Allfirst, as lender with regard to the $4 million line of credit, be equitably subrogated to its position as holder of Ortenzio's guaranty of the $1.2 million loan. Equitable subrogation is available when a person's money is used by another to discharge an obligation without that person's knowledge or consent. *See Restatement of Restitution* § 162, at 653 (1937), which states:

> Where property of one person is used in discharging an obligation owed by another or a lien upon the property of another, under such circumstances that the other would be unjustly enriched by the retention of the benefit thus conferred, the former is entitled to be subrogated to the position of the obligee or lien-holder.

The *Restatement of Restitution Comments* following section 162 applies this rule where a person's property "is used by another without his consent in discharging an obligation of the other or a lien upon the other's property." *Id.* cmt. b, at 655. As § 162 of the *Restatement of Restitution* indicates, the basis for equitable subrogation is the equitable concept of unjust enrichment. *See National Surety Co. v. Franklin Trust Co.*, 313 Pa. 501, 507, 170 A. 683 (1934) (right to subrogation arises by operation of, and depends on, equity alone). Without question, Defendant is not entitled to have

Allfirst's equitable subrogation claim decided by a jury. The claim must be decided by this Court.

Another count requests a determination that the payment, being a borrowing on the line and an increase in the amount due under the promissory note of CCI evidencing the line, was a conditional payment that never became effective because the balance on the line of credit and due under the promissory note was never paid after the repayment borrowing was made. As the Pennsylvania Supreme Court stated in an early case:

> Nothing is better stated than that, in the absence of any special agreement to the contrary, **the mere acceptance, by a creditor, from his debtor, of the note or check of a third person, to the creditor's order, for a pre-existing indebtedness, is not absolute, but merely conditional payment, defeasible on the dishonor or non-payment of the note or check; and, in that event, the debtor remains liable for his original debt.**

Holmes v. *Briggs,* 131 Pa. 233, 240, 18 A. 928 (1890). The present situation is that of a debtor (Ortenzio) paying his obligation to a creditor ("Allfirst") by delivering to the creditor the obligation of another person (CCI) to make a payment. The payment to the creditor through the medium of the third party obligation is a conditional payment which does not discharge the debtor's indebtedness unless the third party satisfies its obligation.

In this case, Ortenzio discharged his obligation under the guaranty, which was a direct and primary obligation,[1] by a borrowing under CCI's line of credit, which increased the amount due under the line of credit promissory note. This payment of the guaranteed sum through the use of CCI's line of credit was conditional and did not become effective until such time as CCI paid its

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[1] The Suretyship Agreement specifically states "The liability of the Undersigned hereunder is a primary and direct obligation without regard to any other obligor or security or collateral held by the Bank." This and other provisions throughout the Suretyship Agreement authorized Allfirst to collect the $1.2 million from Ortenzio without having to resort to CCI. Allfirst had the right to collect the $1.2 million loan from Ortenzio and the balance outstanding under the $4 million line from CCI.

obligations under the line of credit and the promissory note which evidenced it, which has not occurred. Like the equitable subrogation claim, this claim seeks to annul the effect of the ephemeral payment and make the guaranty enforceable, relief which is fundamentally rescissional and restuitutionary.

The final count alleges fraud based upon implied misrepresentation and concealment in connection with the payment. A claim for fraud can be either legal or equitable, depending on the type of relief sought. *Skippy, Inc. v. CPC International, Inc.*, 674 F.2d 209, 214 (4th Cir. 1982). What Allfirst wants is the payment of the $1.2 million loan with a borrowing under the line rescinded and cancelled based on the fraud perpetrated by John Ortenzio in repaying the Allfirst with its own money to escape liability under his guaranty prior to the financial collapse of CCI Construction. This is a claim for equitable relief and not a claim for legal damages.

IV.
Conclusion.

This case was filed by Allfirst in anticipation of a court trial. Defendant filed a jury demand. But, as has been discussed, the equitable nature of this suit does not support a right to trial by jury. The jury demand was filed without right and should be stricken to permit the case to proceed as a trial to the Court.

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